

SUPREME COURT, U. S.

FILED

OCT 11 1975

MICHAEL BOGAN, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. **75-562**

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

[Appendix in Separate Volume]

MARVIN J. SONOSKY
2030 M Street, N.W.
Washington, D.C. 20036

Attorney for Petitioner.

October, 1975

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATUTES INVOLVED	2
STATEMENT	2
REASONS FOR GRANTING THE WRIT	17
CONCLUSION	33

TABLE OF AUTHORITIES

Cases:

Ash Sheep Co. v. United States, 252 U.S. 159 (1920)	19
City of New Town, North Dakota v. United States, 454 F.2d 121 (C.A. 8, 1972)	28
Clairmont v. United States, 225 U.S. 551 (1912)	29
Cook v. Parkinson, No. 75-1306 (C.A. 8, 1975)	19
DeCoteau v. State County Court, 420 U.S. 425 (1975)	3, 20, 21
Dick v. United States, 208 U.S. 340 (1908)	29
Hallowell v. United States, 221 U.S. 217 (1911)	29
Matter of Heff, 197 U.S. 488 (1905)	29
Lone Wolf v. Hitchcock, 187 U.S. 553 (1903)	6
Mattz v. Arnett, 412 U.S. 481 (1973)	3, 5, 19, 20, 23, 24
Minnesota v. Hitchcock, 185 U.S. 373 (1902)	5, 19, 28
Seymour v. Superintendent, 368 U.S. 351 (1962)	3, 19, 19, 20, 24, 28
Sioux Tribe v. United States, 97 Ct. Cl. 613 (1942), certiorari denied 318 U.S. 789 (1943)	4
Sioux Tribe v. United States, 205 Ct. Cl. 148, 500 F.2d 458 (1974)	3

(ii)

Cases, continued:

	<u>Page</u>
Sioux Nation of Indians v. United States, 33 Ind. Cl. Comm. 151 (1974)	4
State v. Molash, 86 S.D. 558, 199 N.W.2d 591 (1972).	19
State of South Dakota v. Whitehorse, No. 11319-a-JMD, ——— S.D. ———, (August 1, 1975)	19
United States v. Brindle, 110 U.S. 688 (1884)	19
United States ex. rel. Condon v. Erickson, 478 F.2d 684 (C.A. 8, 1973)	18, 29
United States v. Kagama, 118 U.S. 375 (1886).	18
United States v. Mazurie, 419 U.S. 544 (1975)	18
United States v. Mille Lac Band of Chippewa Indians, 229 U.S. 498 (1913)	19
United States v. Nice, 241 U.S. 591 (1916).	29
United States v. State of Washington, 496 F.2d 620 (C.A. 9, 1974), cert. denied 419 U.S. 1032	19

Treaties and Statutes:

Treaty of April 29, 1868, 15 Stat. 635	4
Act of February 28, 1877, 19 Stat. 254	4
Act of June 15, 1880, c. 223, sec. 10, 21 Stat. 199	5
Act of August 7, 1882, c. 434, sec. 1, 22 Stat. 341	5
Act of March 3, 1885, c. 319, sec. 5, 23 Stat. 340	5
Act of March 3, 1885, c. 337, sec. 1, 235(a), 351	5
Act of July 4, 1888, c. 519, sec. 2, 25 Stat. 240	5
Act of January 14, 1889, c. 24, sec. 1, 25 Stat. 642	5
Act of March 2, 1889, c. 405, 25 Stat. 888	4
Act of June 17, 1892, c. 120, 27 Stat. 52	5
Act of August 15, 1894, c. 290, 28 Stat. 286	5
Act of June 10, 1896, c. 398, sec. 10, 29 Stat. 358	5
Act of March 3, 1899, c. 450, 30 Stat. 1362, 1364	6
Act of May 27, 1902, c. 888, 32 Stat. 263	5
Act of April 23, 1904, c. 1484, 33 Stat. 254	2

(iii)

Treaties and Statutes, continued:

	<u>Page</u>
Act of March 2, 1907, c. 2536, 34 Stat. 1230	2
Act of March 3, 1909, c. 263, 35 Stat. 781	23, 29
Act of May 6, 1910, c. 203, 36 Stat. 348	29
Act of May 30, 1910, c. 260, 36 Stat. 448	2
Act of June 1, 1910, c. 264, 36 Stat. 455	29
Act of August 20, 1964, 78 Stat. 560	23
S.D. Session Laws, 1961, Ch. 464	18

Congressional References:

S. Rept. 662, 57th Cong., 1st sess. (1902).	7
H. Rept. 954, 57th Cong., 1st sess. (1902)	7
H. Rept. 2099, 57th Cong., 1st sess. (1902).	8
S. Rept. 3271, 57th Cong., 2d sess. (1903)	8
H. Rept. 3839, 57th Cong., 2d sess. (1903).	8
H. Rept. 443, 58th Cong., 2d sess. (1904)	9, 24
S. Rept. 651, 58th Cong., 2d sess. (1904).	9
H. Rept. 7613, 59th Cong., 2d sess. (1907).	11, 30
S. Rept. 6838, 59th Cong., 2d sess. (1907)	30
S. Rept. 887, 60th Cong., 2d sess. (1909)	6, 12
S. Rept. 1166, 62d Cong., 3d sess. (1913).	14
S. Rept. 377, 94th Cong., 1st sess. (1975).	23
H. Rept. 480, 94th Cong., 1st sess. (1975).	23
38 Cong. Rec. 1421-29, January 30, 1904	9
38 Cong. Rec. 4984-88, April 18, 1904.	9
41 Cong. Rec. 3104, February 16, 1907	12, 32
45 Cong. Rec. 5457, April 27, 1910	24
49 Cong. Rec. 3, 4210, February 27, 1913	14
121 Cong. Rec. S16279-80, September 19, 1975	23
121 Cong. Rec. H9635-39, October 6, 1975	23
121 Cong. Rec. S17685, October 7, 1975	23

(iv)

	<u>Page</u>
<i>Miscellaneous:</i>	
Cohen, Felix S., <i>Handbook of Federal Indian Law</i> , p. 175 (GPO 1945)	29
McLaughlin, <i>My Friend the Indian</i> , p. 297 (Houghton Mifflin Company, 1910) (L.C. E77 M162)	6
<i>Census of the Population 1970, Characteristics of the Population</i> , Part 43, South Dakota	25
Report of CIA, 1901, pp. 371, 372	7
Report of CIA, 1906, p. 483	9
Report of CIA, 1909, p. 148	13

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. _____

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
[Appendix in Separate Volume]

The Rosebud Sioux Indian Tribe of South Dakota petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*) is not yet reported. The opinion of the district court

reported in 375 F.Supp. 1065, is set out in Appendix B, *infra*. (All appendices are in a separate volume.)

JURISDICTION

The judgment of the court of appeals was entered on July 16, 1975. App. B, p. 114, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the reservation status of three-fourths of the Rosebud Indian Reservation was terminated by three statutes enacted in 1904, 1907 and 1910 under which Congress, unilaterally, and without the consent of the Tribe, directed the sale of unallotted tribal reservation land to settlers with the proceeds to be credited to the Tribe, and at the same time affirmatively declared that the United States was not purchasing the land and was not guaranteeing to find purchasers, but was acting only as a trustee in the disposition of the lands and to expend and pay over the proceeds to the Tribe, as received.

STATUTES INVOLVED

The statutes involved are the Acts of April 23, 1904, c. 1484, 33 Stat. 254; March 2, 1907, c. 2536, 34 Stat. 1230; and May 30, 1910, c. 260, 36 Stat. 448, respectively. The full texts of the three statutes are set out in Appendices C-1, C-2 and C-3, *infra*, respectively.

STATEMENT

In each of three statutes, adopted in 1904, 1907 and 1910, the United States, without the consent of the Tribe, unilaterally opened unallotted tribal land on the Rosebud Indian reservation for sale to settlers, with the

proceeds of sale to be credited to the Tribe, as received. In the last section of each statute, the United States affirmatively declared that it was not purchasing the land, and that it was not guaranteeing to find purchasers. (Appendices C-1, -2, -3, *infra*.) The court of appeals construed the three statutes to extinguish Indian title, to restore the land to the public domain and to terminate the reservation status of about three-fourths of the reservation. The Tribe's position is that the decision below is in contravention of the controlling principles established in *DeCoteau v. State County Court*, 420 U.S. 425 (1975). *Mattz v. Arnett*, 412 U.S. 481 (1973) and *Seymour v. Superintendent*, 368 U.S. 351 (1962).

The Rosebud Sioux Tribe of South Dakota is an important Indian tribe with a current enrollment of 9400 members and an on-reservation population of 7181 Indians. (App. D, p. 129.) The Tribe never has sold a single acre of reservation land to the United States. The reservation area has been Sioux country since before the Louisiana Purchase. The area never has been public land of the United States. Consistently through the years, the Tribe has claimed and exercised jurisdiction over Indians on the reservation areas in suit, and Indians on these areas have regarded themselves as subject to the jurisdiction of the Tribe. Since 1868, the Bureau of Indian Affairs has administered the areas as part of the Rosebud reservation.

The Rosebud Sioux are Indians of the Sioux Nation. As early as 1851, the United States recognized the Sioux Nation as the owner of a vast domain of over 60 million acres in North Dakota, South Dakota, Nebraska, Montana and Wyoming, *Sioux Tribe v. United States*, 205 Ct. Cl. 148, 500 F.2d 458, 460 (1974). Article 2 of an 1868 Treaty "set apart for the absolute and undisturbed use and occupation" of the Sioux, the Great Sioux Reserva-

tion, embracing about 25 million acres of Sioux land west of the Missouri River in South Dakota. Treaty of April 29, 1868, 15 Stat. 635. The same article guaranteed that no one, except authorized Federal personnel "shall ever be permitted to pass over, settle upon, or reside" on the reservation. Article 12 of the treaty promised that no sale of any part of the Great Sioux Reservation would be "of any validity" without the written consent of three-fourths of the male adults. None of those promises was kept.

In 1877, the United States, without Sioux consent, unilaterally acquired about 7.5 million acres of the Black Hills portion of the reservation, highly prized for its gold.¹ Under an 1889 Act, assented to by three-fourths of the male adults, one-half of the remainder of the Great Sioux Reservation was "restored to the public domain" (sec. 21) and the balance was divided into six reservations, each defined by boundaries (secs. 1-6). Act of March 2, 1889, c. 405, 25 Stat. 888.² Provision was made for allotments on each reservation (secs. 8-11). Section 19 of the 1889 Act extended to the six reservations all of the provisions of the 1868 Treaty, not in conflict with

¹Act of February 28, 1877, 19 Stat. 254; *Sioux Nation of Indians v. United States*, 33 Ind. Cl. Comm. 151, 157 (1974); also *Sioux Tribe v. United States*, 97 Ct. Cl. 613, Fdgs. 2, 3, 4, pp. 619-627, (1942) cert. denied 318 U.S. 789. Held to be a Fifth Amendment taking in *Sioux Nation v. United States*, 33 Ind. Cl. Comm. 151 (1974), reversed on grounds of res judicata, *United States v. Sioux Nation*, Appeal No. 16-74, ___Ct.Cl.____, petition for certiorari filed September 22, 1975, Docket No. 456.

²Section 28, of the 1889 Act provided that the Act take effect only upon assent by the three-fourths majority as required by the 1868 Treaty. Pursuant to section 28, the President proclaimed that the requisite consent had been obtained. Proclamation of February 10, 1890 (26 Stat. 1554).

the 1889 Act, including the promise of "absolute and undisturbed use and occupancy," the promise that outsiders would be barred, and the promise that no reservation land would be sold without the written consent of three-fourths of the male adults. The boundaries of Rosebud, one of the six reserves, were delimited and the area "set apart for a permanent reservation for the Indians receiving rations and annuities at the Rosebud Agency" (sec. 2). The reservation area embraced all of what later became Todd, Mellette and Tripp counties, and about three-fourths of Gregory County.

The three Rosebud statutes in suit are termed "surplus" land statutes because the Government deemed land not immediately required for allotment to be surplus to the ~~Government's~~ ^{Tribes's} needs. Commencing in the 1880's, Congress enacted a number of surplus land statutes opening unallotted tribal land for sale to settlers with the proceeds credited to the landowning tribe, as received by the Government.³ Those statutes, quite uniformly made Indian consent a prerequisite to statutory validity. On January 5, 1903, this Court held that a statute ratifying an outright sale for a flat consideration was within the authority conferred on Congress by the Constitution,

³For example: Acts of June 15, 1880, c. 223, sec. 10, 21 Stat. 199 (Utes); August 7, 1882, c. 434, sec. 1, 22 Stat. 341 (Omaha); March 3, 1885, c. 319, sec. 5, 23 Stat. 340 (Umatilla); March 3, 1885, c. 337, sec. 1, 23 Stat. 351 (Sac and Fox); July 4, 1888, c. 519, sec. 2, 25 Stat. 240 (Winnebago); January 14, 1889, c. 24, sec. 1, 25 Stat. 642 (Chippewa) construed in *Minnesota v. Hitchcock*, 185 U.S. 373, 394-395 (1902); Act of August 15, 1894, c. 290, 28 Stat. 286, 296-7 (Sac and Fox); *idem*, 28 Stat. 332 (Yuma); June 10, 1896, c. 398, sec. 10, 29 Stat. 358 (San Carlos); May 27, 1902, c. 888, 32 Stat. 263 (Utah and Ouray). A notable exception where no consent was obtained is the Klamath Act of June 17, 1892, c. 120, 27 Stat. 52, held not to disestablish the reservation in *Mattz v. Arnett*, 412 U.S. 481 (1973).

even without Indian consent by the three-fourths majority required by an earlier treaty. *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

Commencing in 1904, after *Lone Wolf* established that tribal consent was not necessary, Congress enacted at least 21 "surplus" land statutes, affecting 19 different reservations. None of the tribes consented to any of the 21 statutes, except for the Crow 1904 Act and the Wind River 1905 Act. (App. D, Items 5, 8, p. 129, *infra*.) Each of the 21 statutes proclaimed affirmatively that the United States was not a purchaser and did not guarantee to find purchasers. In no instance did the tribe sell and the United States buy or pay for the land, except for school sections 16 and 36 donated to the State. In none of the 21 instances did the land become public land of the United States.

The history of the three Rosebud surplus land statutes starts in 1901, before *Lone Wolf*, *supra*, when Inspector McLaughlin, the Government's most experienced and successful bargainer with Indians,⁴ was dispatched to

⁴McLaughlin was employed in the Indian Service for 40 years (1871-1910). He negotiated 13 of the 21 surplus land acts, including all three with Rosebud. (App. D, p. 129, Items 1,2,4,6,8,9,10,13,15,16,18,19,21.) He negotiated many other agreements, including an earlier one of March 10, 1898 in which the Rosebud Indians were induced to consent to the presence of the Lower Brule, who had been moved onto the Rosebud reservation. Act of March 3, 1899, c. 450, 30 Stat. 1362, 1364. McLaughlin spoke Sioux and was particularly valuable to the Government in negotiations with the Sioux because he had married into the Sioux tribe. See, Council proceedings, December 15, 1906: "Ralph Eagle Feather: * * * Now, my friend, we respect you a good deal because you belong to the tribe, married into our nation, that is the reason we respect you a good deal. You know that. * * *." (App. E, Item 5, p. 134.) McLaughlin, *My Friend the Indian*, p. 297. (Houghton Mifflin Company 1910) (L.C. E77 M162.) Also S. Rept. 887, 60th Cong., 2d sess., p. 3 (1909), R. App. III, p. 290.

negotiate an agreement with the Rosebud Indians for the outright sale of 416,000 acres in the Gregory county portion of the reservation as delimited in section 2 of the 1889 Act, *supra*. When McLaughlin came to Rosebud in 1901, there were 4917 Sioux on the reservation, some 4508 allotments had been made pursuant to sections 8-11 of the 1889 Act, of which 452 allotments were in the Gregory county portion of the reservation. (Report of Commissioner of Indian Affairs, 1901, pp. 371, 372; H.Rept. 954, 57th Cong., 1st sess., p. 1 (1902); App. II, p. 40, record below, hereinafter cited "R.App.—, p.—")⁵ McLaughlin succeeded in obtaining an agreement in 1901 under which the Rosebud Sioux did "cede, surrender, grant and convey * * * all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated * * * in Gregory County" for the flat sum of \$1,040,000. Three fourths of the male adults consented. (App. C-1, pp. 116-117.) The final article of the 1901 agreement called for ratification by Congress. (App. C-1, p. 116.)

In 1902 bills were introduced to ratify the sale. The bill as reported to the Senate, in addition to ratifying the agreement, provided for free homesteads and the donation of school sections to South Dakota. S. Rept. 662, 57th Cong., 1st sess., pp. 1-2 (1902); R. App. II, p. 37. The bill (S. 2992) was passed in the Senate after stiff opposition on the ground that public funds ought not be used to purchase Indian land and then give the land away to homesteaders. (App. A, pp. 16-19, *infra*.) On the

⁵Copies of most of the legislative and other materials referred to by the court below appear in Appendices I, II, III, IV transmitted to the Court pursuant to Rule 21(1) by letter of October 2, 1975 to the Clerk.

House side, the committee rejected the Senate provisions for free homesteads as well as for the donation of school sections. H.Rept. 2099, 57th Cong., 1st sess., p. 1 (1902); R. App. II, p. 44.

To overcome the opposition, new bills were introduced and reported out in 1903. Although referred to as a "new policy" (App. A, p. 19), the new bills followed the premise of the earlier surplus land statutes, enacted commencing in the 1880's, where the land was opened and the proceeds credited to the Tribe. (See fn. 3, p. 5, *supra*.) The preambles of the new bills embodied the 1901 agreement exactly as approved by the Rosebud Tribe. Then came the enactment clause preceding section 1 which "ratified" the "agreement" after first making broad substantive changes that converted the transaction from an outright sale for a sum certain, into a "surplus" land statute arrangement, whereby the uncertain future proceeds of settlers' purchases were to be expended for the benefit of the Tribe, as received. The bills called for Indian consent to the new "surplus" land arrangement. (S. 7390; H.R. 17467; S. Rept. 3271, 57th Cong., 2d sess., p. 2 (1903), adopting H. Rept. 3839, 57th Cong., 2d sess. (1903); R. App. II, p. 57. The Senate passed S. 7390 but the House did not act. (App. A, p. 19, fn. 27.)

To obtain consent to the new form of agreement, Inspector McLaughlin was dispatched to Rosebud in the summer of 1903 "for the purpose of negotiating a new agreement * * * along the lines proposed in Senate Bill No. 7390". (App. A, p. 20, fn. 28.) Despite extended councils on six days in July and August 1903, McLaughlin failed to get the requisite three-fourths consent.⁶

⁶Minutes of councils held at Rosebud July 24, 29, 30, August 7, 8, 10, 1903. R. App. II, pp. 70-126, in the court below. Some

[footnote continued]

Hollow Horn Bear, a principal spokesman, perhaps best expressed the thinking of the Indians when he said that if the United States had regard for the treaty requirement of consent by a three-fourths majority, "they should not open that Gregory County without our consent. If they do, I shall feel like a prisoner in my own country." (App. E, Item 1, p. 131.) Nevertheless, after the new session of Congress opened in 1904, a fresh bill, omitting the requirement of tribal consent, was promptly reported out of committee in January and February 1904 and became law on April 23, 1904.⁷ Five "surplus" land acts became law that same month, within a few days of each other. (See App. D, Items 2-6, p. 129.)

In December 1906, less than three years after the 1904 Act, bills were introduced to open the Tripp county portion of the reservation. The bills were held in abeyance while McLaughlin was sent to Rosebud to obtain the Indians, consent. (App. A, p. 34, fn. 55; p. 35, fn. 57.) When McLaughlin came to Rosebud in 1906, there were 5021 Indians on the reservation. (Report, Commissioner of Indian Affairs, 1906, p. 483.) About 187,000 acres in Tripp county already had been allotted. (App. E, Item 3, p. 133.)⁸ McLaughlin was reminded that

excerpts are in Appendix E, *infra*. McLaughlin obtained 90 signatures in open council and solicited 647 more by touring the reservation for 16 days and holding meetings in nine of the reservation districts. He still fell 296 short of the required three-fourths majority. App. E, Item 2, p. 132.

⁷The legislative history of H.R. 10418, appears in H. Rept. 443, 58th Cong., 2d sess., January 21, 1904; House debates, 38 Cong. Rec. 1421-29, January 30, 1904; S. Rept. 651, 58th Cong., 2d sess., February 4, 1904; 38 Cong. Rec. 4984-88 (April 18, 1904).

⁸Based on an average of 160 acres per allotment, this meant over 1100 allotments. Following the 1907 Act a large number of additional allotments were made in Tripp county. As late as June

[footnote continued]

the 1868 Treaty required a three-fourths majority. At the same time he was instructed to tell the Indians "with great particularity" that under the decision in *Lone Wolf*, their consent was not necessary, but that it was the Department's desire "to obtain from them their views of the terms on which the opening ought to be made; and that it will doubtless be to their advantage to enter into an agreement * * *." (App. E, Item 4, p. 133, R. App. II, p. 166.)

McLaughlin held councils with the Indians in the deep of winter on four days in December 1906 and three in January 1907. (App. A, p. 35, fn. 58.) The Indians submitted their wishes in writing (App. A, p. 35; App. E, Item 8, p. 135.) The Indians complained that the 1901 agreement had not been fulfilled, that the agreed consideration of \$1,040,000 had not been paid,⁹ that the receipts from settlers were too uncertain and already had resulted in cattle losses, (App. E, Item 10, pp. 135-136) and that the bill made no provision for allotments to all unallotted children born since 1889, for new allotments to the 80 or so Indians who had refused allotments of poor quality land and for processing the pending backlog of 600 or 700 allotments. (App. E, Items 6, 10, 12, 14,

30, 1925, the General Accounting Office reported that of the 1,083,680.11 acres affected by the 1907 Act, over 37% (406,081.75 acres) were in Indian allotments. (App. E, p. 142, *infra*.)

⁹Appendix E, Item 10, p. 135: Hollow Horn Bear (a principal spokesman, App. E, Item 9, p. 135): " * * * I want \$5 per acre for the entire tract and I want the Great Father to pay for it. I want the Great Father's council to pay for this land at \$5 per acre straight, to guarantee it. * * * I want the money to be placed in the U.S. Treasury the same as former treaties were made." (emphasis supplied) The entire transcript of the council proceedings is in R. App. III, pp. 176-269.

15, pp. 134-138.) McLaughlin promised "positively" that the demand for allotments would be met. (App. E, Items 6, 12, 14, pp. 134, 136, 137.) The Indians asked that the bill provide for 5% interest on their money in the Treasury (*idem*, Item 13, pp. 136-137) and higher prices for the land. (App. A, p. 35.) In particular, the Indians saw no reason why the United States should pay \$2.50 per acre, instead of the fair value of the school sections the Government was buying for donation to the State. (*Idem*, Items 13, 14, 15, pp. 136-138.)

At the negotiations McLaughlin repeatedly voiced thinly disguised *Lone Wolf* threats,—i.e., it would be better for the Indians to agree because if they did not agree, Congress could and would open the land anyhow. (App. E, Items 11, 16, 17 pp. 136, 138-139 *infra*.) In any event McLaughlin prepared an agreement. (The agreement appears in H. Rept. 7613, 59th Cong., 2d sess. pp. 5-8 (1907) R. App. III, pp. 279-281.) In open council, McLaughlin obtained only 43 signatures (thumb prints). He then toured the reservation as he had done with the 1904 Act, and solicited additional signatures. With all that, he still fell 321 signatures short of the requisite three-fourths majority. (App. E, Item 19, p. 139; H. Rept. 7613, *supra*, p. 7 showing 705 of 1368 qualified Indians signed.)

Even though there was no agreement, the Secretary of the Interior, recommended a simple ratification bill embodying the "agreement". (App. A, p. 36, fn. 65.) The House disregarded both the recommendation and the "agreement" and passed the unilateral "surplus" land statute that became the Act of March 2, 1907. On the floor of the House, the manager of the bill, the Congressman from South Dakota, gave the House the erroneous understanding that the Indians had con-

sented.¹⁰ The Senate adopted the House report and passed the bill without debate. The Senate version provided for interest at 5% on the first million dollars in proceeds, the House version 3%. In conference, the House prevailed and the 3% version became law. (App. A, pp. 36-37.)

In 1908, less than two years after the 1907 Act, a "surplus" land bill was introduced in the Senate to authorize the sale and disposition of the unallotted land in the Mellette County portion of the reservation. (App. A, p. 45, fn. 89; S. 7379, 60th Cong., 2d sess.) The Secretary of the Interior recognizing that under *Lone Wolf* the consent of the Indians was not necessary, recommended that at least "the views of the Indians should be procured before the bill is finally acted on, * * *." S.Rept.887, 60th Cong., 2d sess., p. 3 (1909), R. App. III, p. 288. The Senate Committee disregarded the recommendation because "it would delay the consideration of the matter unduly if action were withheld for that purpose [consultation with Indians]." *Idem*, p. 2. When the Senate failed to consider the bill (App. A, p. 45, fn. 91), Inspector McLaughlin was ordered to the field, not to obtain the consent of the Indians, but "to take up with the Indians of the Pine Ridge and Rosebud Reservations the matter of opening parts of these reservations to settlement * * *." (App. E, Item 20, p. 140; R. App. III, p. 292.)

¹⁰41 Cong. Rec. 3104, App. III, p. 3104; " * * * The bill is substantially in accordance with an agreement which has just been made with the Indians, signed by forty-two more than a majority of the male Indians over the age of 18 years. * * *."

"The Indians, as I have stated before, have agreed to the disposition of it [land] under the terms of the bill."

The House was misled. Of course, the requisite three-fourths majority required by the 1868 Treaty had not been obtained.

In 1909, when McLaughlin went to Rosebud, there were about 5060 Indians on the Rosebud reservation. (Report of the Commissioner of Indian Affairs, 1909, p. 148.) The Mellette county portion of the reservation contained 837,125 acres. Of this acreage, as late as 1925, over 60% (514,509 acres) was still allotted. (App. E, Item 27, pp. 143-144, R. App. IV, pp. 471-2.) McLaughlin held three councils at Rosebud in March and April 1909. (App. A, p. 45, fns. 92, 93, R. App. III, pp. 293-328.) He told the Indians, "I am here * * * to present to you the question of opening to settlement the surplus lands of a certain part of your reservation * * *." (App. E, Item 21, p. 140.) He acknowledged the Indians' opposition "to the opening of any more of your reservation." (App. E, Item 22, p. 141) He again employed the *Lone Wolf* threat repeatedly reminding the Indians that Congress had the power to open the lands without Indian consent. (App. E, Items 23 and 24, p. 141.) The Indians refused to be threatened. (App. E, Item 25, p. 142.) They opposed the opening of the reservation. In the next Congress, a new bill was introduced that became the Act of May 30, 1910.¹¹ Two other surplus land acts were adopted at about the same time. (See App. D, Items 19, 20, p. 129.)

With the adoption of the 1910 Act, the Todd county area was the only portion of the reservation as established by the 1889 Act, not affected by a surplus land act. In 1911 another "surplus" land bill was introduced affecting Todd county. McLaughlin again was sent to Rosebud. The bill was reported out and passed the Senate where it

¹¹This time, during the debates, the Senate was misled into believing that the Indians had consented. Senator Gamble of South Dakota stated (App. A, p. 49): "The Indians themselves agreed to the provisions of this bill after it had been submitted to them for their consideration."

died. S. Rept. 1166, 62d Cong., 3d sess. (1913); 49 Cong. Rec. 3, 4210; R. App. III, p. 396. Otherwise, according to the decision below, there would be no Rosebud reservation.

The Tribe brought this suit charging that State authorities were exercising jurisdiction over Indians on those portions of the reservation affected by the three surplus land acts and asking for judgment declaring, in effect, that the three statutes did not disestablish any part of the Rosebud reservation as bounded by the 1889 Act. The district court entered judgment that the three statutes "did extinguish the reservation or 'Indian land' nature of the unallotted surplus lands in said counties by returning them to the public domain, and did diminish the geographical location of the boundaries of the Rosebud Sioux Reservation to coincide with the boundaries of Todd County, South Dakota [the only area not affected by a surplus land statute]." (App. B. p. 114.) The court of appeals affirmed that judgment. (App. A, p. 61.)

The court of appeals recognized that the 1901 "agreement" (pp. 15-16, *supra*), contemplated an outright cession and sale for a sum certain with the Tribe's consent by a three-fourths majority. The Tribe conceded, even before *DeCoteau*, that if Congress had ratified the 1901 agreement, Indian title would have been extinguished. (App. A, p. 16.) The court ruled that the 1904 Act ratified the 1901 agreement, amended "solely with respect to the method of payment". (App. A, p. 23.) On that basis the court construed the 1904 Act to be a "cession of the County of Gregory" (App. A, p. 26) and held that the language of cession in the unapproved 1901 agreement "ceded, granted and conveyed" the Gregory County land to the United States. (*Idem*, p. 28, fn. 45; also, pp. 30-31.)

Essentially, to determine the intent of Congress in the 1904 Act, the court below relied on various pre-1904-Act statements made in the context of the voluntary, outright cession for \$1,040,000, ultimately incorporated into the 1901 agreement, and on the language of the unratified 1901 Agreement itself.¹² (App. A, pp. 11-27, *passim*.) The court failed to realize that the 1904 Act, far from ratifying the 1901 "agreement", unilaterally converted that "agreement" into a surplus land statute arrangement. For that reason, pre-1904-Act statements can have no bearing on the Congressional intent expressed by the *language* of conversion in the 1904 Act. To put it another way, in the search for Congressional intent, the court below, for all practical purposes, ignored the *language* of the statute and relied on views, expressions of opinion, and erroneous statements of law all derived from extraneous material.

¹²App. A, pp. 25-26: "The 1904 Act, incorporating the entire text of the 1901 agreement (save for the lump sum provision) was obviously an outgrowth of and a continuation of the objectives of the 1901 Agreement. The terminology employed, language of diminution and extinguishment, was used interchangeably with respect both to the proposed ratification of the 1901 Agreement and the passage of the 1904 Act."

The statement can be misleading. The 1901 Agreement is not part of the operating sections of the statute. The preamble of the 1904 Act, preceding the enactment clause, incorporated the entire text of the 1901 agreement leaving nothing out. App. C-1, pp. 115-116. But section 1 of the Act, following the enactment clause, sets out the 1901 "agreement" "as herein amended and modified." What follows is not the agreement subscribed to by the Indians. Much is omitted—a good deal more than the "lump sum provision" for payment. A major omission was the requirement for Indian consent specified in Article VI of the Agreement. Other omissions of a strong substantive nature are discussed at pp. 21-22 *infra*.

The court of appeals extended its erroneous premise that the 1904 Act extinguished Indian title and terminated the reservation status, to the 1907 and 1910 Acts. The court considered that the 1907 Act, like the 1904 Act, and unlike the 1910 Act, was the product of "formal negotiations and agreement with the Rosebud Indians." (App. A, p. 44.) True, there was a 1907 instrument signed by less than a three-fourths majority (pp. 8-9 *supra*). That instrument was not a contract binding on the Tribe. But, even if the 1907 "agreement" had been binding, which it was not for lack of a three-fourths majority, the 1907 Act did not ratify the agreement, or make any mention of it. (App. C-2, p. 121.)

Nevertheless, the court below equated the 1907 Act with its concept of the 1904 Act saying "[T]he 1907 Act is, in substance, identical to the 1904 Act: * * *" (App. A, p. 38) and that the 1907 Act simply expressed the same continuity of purpose that the court below had found in the pre-1904-Act materials related to the voluntary, outright sale for \$1,040,000 expressed in the 1901 Agreement (*idem*, pp. 38-40). The court said (App. A, p. 40): "We need simply note that the 1907 Agreement is similar in form to the 1901 Agreement, was negotiated between the same parties, and contains similar language of cession." Form, parties and language are irrelevant. What is relevant is that the instrument was ineffective for lack of a three-fourths majority, and Congress never ratified it. On this the court is silent.

As to the 1910 Act, the court below agreed that there were no "formal negotiations and agreement with the Rosebud Indians." (App. A, p. 44.) Even so, the court fitted the 1910 Act into the same cast it had provided for the 1904 and 1907 Acts. The court observed that

"[T]he 1910 Act is substantially similar to the 1907 Act. Its operative language is identical * * *." (*Idem*, p. 46.) Having already decided that in the 1904 and 1907 Acts Congress had determined to alter the reservation boundaries, the court could "find nothing in the language of the 1910 Act or in the surrounding circumstances and legislative history which indicates a change in that congressional determination to alter the reservation boundaries *which we have found in the 1904 and 1907 Acts.*" (*Idem*, p. 48.) (emphasis supplied.)

REASONS FOR GRANTING THE WRIT

1. The decision of the court of appeals is of broad general importance in Indian law. The district court recognized that its decision would have "great political, social, cultural and economic effects." (App. B, p. 112.) Even if confined to those "surplus" land statutes enacted in 1904 and thereafter, without regard to the earlier statutes (see p. 5, fn. 3, *supra*), the decision below will open the way to destroy the reservation status of all,¹³ or parts, of at least 17 Indian reservations with an Indian population in excess of 69,000. (App. D, p. 129.) There are at least eight such reservations in the Eighth Circuit. (App. D, p. 129, Items 1, 2, 4, 10, 15, 16, 18, 20.) All "surplus" land reservations predate the creation of the State in which they are located. We believe all have been and now are administered by the United States as Indian reservations. The decision below would have a revolutionary impact on reservation life. Tribal government

¹³The surplus land statutes of 1908 and 1913 between them cover all of the Standing Rock Sioux Reservation in North Dakota and South Dakota (App. D, p. 129, Items 16 and 21), and the surplus land statute of 1908 affects all of the Fort Peck Indian Reservation in Montana (*idem*, Item 17).

would be virtually destroyed. Indians would be subjected to all aspects of State law and at the mercy of State law and order. They no longer would possess "the power of regulating their internal and social relations * * *." *United States v. Kagama*, 118 U.S. 375, 381-382 (1886), quoted in *United States v. Mazurie*, 419 U.S. 544, 557 (1975)

The people of South Dakota have rejected prior efforts of the State legislature to extend State jurisdiction over reservation Indians.¹⁴ On the west side of the State, where most of the reservations are located, an organization called "Civil Liberties for South Dakota Citizens" recently has been formed that opposes Indian efforts to assert their treaty and reservation rights. The prognosis is not good for the public peace. Indians regard and call this organization the "Indian Klu Klux Klan." Unless set aside, the decision below will wipe out traditional procedures and Indian self-government and will have far ranging effect on the lives of tens of thousands of reservation Indians, over 7,000 at Rosebud, and more than 20,000 on the other four reservations in South Dakota affected by surplus land statutes (Standing Rock, Cheyenne River, Pine Ridge and Lower Brule) as well as the Indians on reservations in other states, affected by surplus land statutes. (App. D, p. 129.)

The same district court that rendered the decision in this case has since held that the 1910 surplus act affecting

¹⁴For 15 years Congress offered South Dakota the opportunity to accept State jurisdiction over Indians on the reservation without Indian consent. The people of the State, by referendum, overwhelmingly rejected the 1961 attempt of the South Dakota legislature to take over such jurisdiction in 1961 (Session Laws 1961, Ch. 464). See *United States ex rel Condon v. Erickson*, 478 F.2d 684, 685, fn. 1 (1973).

the Pine Ridge reservation, adopted three days before the Rosebud act, terminated the Bennett County portion of the Pine Ridge reservation. (App. D, p. 129, Item 18.) The appeal is now under submission in the court below. (*Cook v. Parkinson*, No. 75-1306.) Before the *Rosebud* decision below, the Supreme Court of South Dakota, relying on *Seymour v. Superintendent*, 368 U.S. 351 (1962), held that the 1913 surplus act (App. D, p. 129, Item 21) did not terminate the east half of the Standing Rock Sioux reservation. *State v. Molash*, 86 S.D. 558, 199 N.W.2d 591 (1972). Recently, the Supreme Court of South Dakota has signaled that in view of the *Rosebud* holding below, its 1972 decision in *Molash* was wrong. *State of South Dakota v. Whitehorse*, No. 11319-a-JMD (August 1, 1975). (See App. E, Item 28, pp. 145-146 for the pertinent excerpt.)

2. This is the first case in which any Federal appellate court has held that a "surplus" land statute disestablished a reservation. Whenever the question has been presented, this Court has held that surplus land statutes do not operate to terminate the reservation status,¹⁵ do not extinguish trust title and do not convert the tribal trust land into public land of the United States.¹⁶ Prior to this case the same was true of the court below¹⁷ and still is

¹⁵*Mattz v. Arnett*, 412 U.S. 481 (1973); *Seymour v. Superintendent*, 368 U.S. 351 (1962).

¹⁶*Ash Sheep Co. v. United States*, 252 U.S. 159 (1920); *United States v. Mille Lac Band of Chippewa Indians*, 229 U.S. 498 (1913); *Minnesota v. Hitchcock*, 185 U.S. 373, 393-395 (1902); *United States v. Brindle*, 110 U.S. 688, 693 (1884).

¹⁷*City of New Town, North Dakota v. United States*, 454 F.2d 121 (1972); *United States ex rel Condon v. Erickson*, 478 F.2d 684 (1973).

true in the Ninth Circuit.¹⁸ The holding below is inconsistent with the decisions of this Court, with the decision of the Ninth Circuit and with the prior decisions of the court below.

3. The decision below is plainly erroneous and inconsistent with this Court's decision in *Seymour v. Superintendent*, *supra*, *Mattz v. Arnett*, *supra*, and the principles reiterated in *DeCoteau v. District County Court*, *supra*. In *DeCoteau* the Court emphasized (420 U.S. at p. 444): "This Court does not lightly conclude that an Indian reservation has been terminated. * * * The congressional intent [to terminate] must be clear, to overcome 'the general rule that [d]oubtful expressions are to be resolved in favor of the weak and defenseless people who are wards of the nation, dependent upon its protection and good faith.' [citing]. Accordingly, the Court requires that 'congressional determination to terminate * * * be expressed on the face of the Act or be clear from the surrounding circumstances and the legislative history.' "

In *DeCoteau*, although this Court gave the rule of favorable construction of Indian statutes the "broadest possible scope," the Court could not reconcile an intent to continue reservation status with an outright sale and purchase for a sum certain, a sale to which the Indians consented, fully aware that they were giving up their reservation. The Court pointed out that the mere opening of tribal lands to settlement as in *Seymour* and *Mattz*, is not inconsistent with continued reservation status, where, as in the case of all three Rosebud statutes, the statute is a unilateral action by Congress and not the ratification of a previously negotiated agreement to which the tribe

¹⁸*United States v. State of Washington*, 496 F.2d 620 (C.A. 9, 1974), certiorari denied 419 U.S. 1032.

consented. *DeCoteau v. District County Court*, *supra*, pp. 444, 447-448.

Notwithstanding *DeCoteau's* emphatic and careful distinction between a voluntary, outright sale for a sum certain and the "surplus" land statutes in *Mattz* and *Seymour*, the court of appeals undertook to fit this case into the *DeCoteau* cast of an outright sale for a sum certain. To do this, the court in a somewhat ambivalent fashion, held that the 1904 Act ratified an agreement to cede.¹⁹ As noted (pp. 8-9 *supra*), there was no bilateral agreement. The 1901 "agreement," approved by a three-fourths majority of the Indians, by its own terms was ineffective unless ratified by Congress. (App. C-1, Article VI, p. 116.) Congress did not ratify it. (App. A, p. 16.)

To the court below, the *sole* difference between the unratified 1901 Agreement and the unilateral modification in the 1904 Act was the "method of payment." (App. A, p. 23.) This assumes there was a bilateral contract and an agreed payment and that the only change was the method in which that payment was to be made.

¹⁹Ambivalent because early in its opinion the court unequivocally states (App. A., p. 16): "The negotiated Agreement, however, was never ratified." Thereafter, the court states, App. A, pp. 22-23: "Within nine months Congress passed a ratification bill [1904 Act] which amended the 1901 Agreement solely with respect to the method of payment"; *idem*, p. 26—statement that the 1904 Act incorporated the entire text of the 1901 Act and that the legislative materials do not show boundaries were to be left undisturbed "despite the *cession* of the County of Gregory" and that the Gregory county portion of the reservation was "*pro tanto* extinguished"; *idem*, p. 28—that under the 1904 Act the Gregory county portion of the reservation "was ceded, granted and conveyed to the United States, * * *"; *idem*, p. 33—that a beneficial interest was retained, presumably in the proceeds of sale, "does not erode the scope and effect of the *cession* made" by the 1904 Act; (emphasis supplied).

The true difference is that the 1901 instrument, if ratified, would have been a voluntary, outright sale for a guaranteed payment of \$1,040,000 deposited in the United States Treasury, out of which \$250,000 was to be expended as soon as practicable to establish the Indians in live-stock operations, and the balance in five annual expenditures of \$158,000 each for per capita payments. As unilaterally modified by the 1904 Act, the 1901 instrument was not a contract, was not a conveyance and guaranteed nothing. Under the 1904 Act, if there had been no settlers, there would have been no money. There are a number of other substantive differences that compel rejection of the notion that a ratified agreement was made. (See App. F, p. 147.)

The court of appeals brought the 1907 Act and the 1910 Act under the cover of the same erroneous premise that the 1904 Act ratified an outright cession, extinguished Indian title and placed the land in the public domain. See pp. 14-15, *supra*. In no instance did the court consider that the language of any of the three statutes was susceptible of more than one meaning, or was as consistent with a conclusion of no termination, as with a conclusion of termination of reservation status. The court quoted, but never invoked, the rule that in construing Indian statutes, doubts should be resolved in favor of the Indians. Indeed, to bolster its conclusion, the court relied on references to language in subsequent unrelated statutes where incidental to the purposes of the statutes, reference is made to land in what was "formerly a part" of the reservation, or the "former Rosebud Indian reservation." (App. A, p. 34, fn. 54; p. 44, fn. 88; p. 59, fn. 134.) The court made no mention of subsequent statutes of the same kind called to the court's attention,

where language led to the opposite result.²⁰ Such subsequent statutes are inconclusive, inconsistent and not a reliable indicator of Congressional intent. *Mattz v. Arnett*, 412 U.S. 481, 505, fn. 25 (1973).

More important, than subsequent statutes, is the complete absence of language in the three Rosebud statutes expressly terminating any part of the reservation or altering the reservation boundaries. Not a word expresses the clear intent essential to wipe out reservation status and leave hundreds of Rosebud Indians outside the reservation boundaries. The court below is silent on this. Nor did the court note that when Congress intended to terminate reservation status, it used clear language to accomplish that end. *Mattz v. Arnett*, 412 U.S. 481, 504, fn. 22 (1973). The court below *implied* disestablishment of the reservation perhaps in the mistaken notion that this Court called for that result in *DeCoteau*.

²⁰For example, Act of August 20, 1964, 78 Stat. 560, Mellette county (1910 Act) "tracts * * * on the Rosebud Sioux Reservation"; Act of March 3, 1909, c. 263, 35 Stat. 781, 809-810, Gregory county (1904 Act) land "on the Rosebud * * * Reservation."

At this writing, both Houses of Congress passed and cleared for the White House, S. 1327, as amended, transferring to 17 tribes title to "submarginal" lands owned by the United States. The bills as passed recite that "all the right, title, and interest of the United States * * * is hereby declared to be held by the United States in trust for such tribe, and * * * shall be a part of the reservation." (emphasis supplied.) Rosebud is one of the 17 tribes and another 7 are tribes with surplus land statutes listed in App. D, p. 129. Part of the land transferred to the Rosebud Tribe is located in Mellette County deemed "a part of the reservation." S. Rept. 94-377, 94th Cong., 1st sess. (1975); 121 Cong. Rec. S16279-80 (September 19, 1975); H. Rept. 94-480, 94th Cong., 1st sess. (1975); 121 Cong. Rec. H9635-9 (October 6, 1975); 121 Cong. Rec. S17685 (October 7, 1975).

The court of appeals approached the case and examined the materials from the viewpoint of the non-Indian who incorrectly represented that the Indians had no use for the land, did not know how to use it, and were better off without it. The same materials contain repeated statements that the legislation would help the Indian by making the white man his neighbor, from whom he could learn.²¹ *Mattz v. Arnett*, *supra*, 412 U.S. at p. 497. *Seymour v. Superintendent*, 368 U.S. 351, 356 (1962). The court of appeals makes no reference to these.

The court deemed relevant the unsupported 1975 assertion in respondents' brief below that the area "was settled and developed by non-Indians in partial reliance upon the removal of their lands from the exterior bounds of the reservation." (App. A, p. 3.) The court treats the reservation area as if it were uninhabited country awaiting the arrival of the hardy pioneer. Nowhere in the court's opinion is mention made of the number of Indians on the reservation, or the number of allotments on the land affected by the surplus land statutes. (See pp. 7, 9, 13, *supra*.) On the other hand, early in the opinion the court makes a point of reciting that 90% of the 1970 population "in the disputed area is non-Indian". App. A, p. 3.) In so doing, the court distorted this irrelevant fact because it melded the population of all three counties, although each county is covered by a separate act of Congress (only three-fourths of Gregory county is affected). Surely, 1970 population has no bearing on the

²¹H. Rept. 443, 58th Cong., 2d sess., p. 3 (1904) R. App. II, p. 136: Will "bring the Indians into contact with their white brothers, and give them the benefit of learning how to farm and raise stock from actual observation, and it will tend to make them more self-supporting * * *." Similar language is found in 45 Cong. Rec. 5457 (April 27, 1910). R. App. III, p. 347.

1904, 1907 and 1910 intent of Congress. Further, the number of non-Indians has no relevancy. The Tribe's jurisdiction is limited to Indians on the reservation. Finally, if population figures are to be used, even as coloring, then the court of appeals should have shown that according to the 1970 census, 34% of the Mellette county (1910 Act) population is Indian.²²

Given the limitations of this petition, we can but highlight some of the items of statutory language, either disregarded, or erroneously construed by the court below.

²²*Census of the Population 1970, Characteristics of the Population, Part 43, South Dakota:*

County	Non-Indians	Indians	Percent Indian
Mellette	1591	822	34%
Tripp	7668	501	6%
Gregory*	6383	318	4.98%

*Only three-fourths of Gregory is in the reservation area. The population is for the full county.

The issue of current population figures was not raised in either court below and those figures first appeared in court of appeals opinion. The Tribe regards the 1970 Federal census as grossly inaccurate as to reservation Indians and if current Indian population had been an issue in the case, proof of its inaccuracy would have been made. The 1970 census was by mail. A substantial number of reservation Indians simply did not or could not complete and return what to them was a complicated return. The non-Indian census enumerators were not interested in searching out reservation Indians living in isolated areas to record them as Indians. Indians on the reservation are credited to the Tribe for measuring the allocation of funds from the Revenue Sharing Administration. This influences the local enumerators to report Indians as non-Indians so as to enlarge the population base of the State's political subdivisions within the reservation, for purposes of revenue sharing.

a. When the court of appeals read language of extinguishment and termination into the statutes, it paid no heed to the last section of each of the three Rosebud statutes, where Congress affirmatively declared (1) that the United States was not a purchaser, (2) that it was not guaranteeing to find purchasers, and (3) that it was "the intention of this act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received * * *." (For full text, see last sections of statutes in Appendices C-1, -2, -3, *infra*.) This language precludes any notion of termination. The court did not mention it.

b. All three Rosebud statutes directed that the proceeds from the sales of land be credited to the "Indians belonging and having tribal rights on the Rosebud Reservation." (App. C-1, sec. 3, p. 120; App. C-2, sec. 5, p. 122; App. C-3, sec. 7, p. 126.) If, as the court held, each statute terminated a portion of the reservation, the Indians in each disestablished portion no longer would be Indians belonging on the Rosebud reservation. This language cannot be reconciled with dissolution of the reservation. The court below ignored this statutory language.

c. Each of the three statutes provided that nothing in the Act should be construed to deprive "said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this act." (App. C-1, sec. 1, Art. 5, p. 118; App. C-2 and C-3, pp. 123, 127, 1907 and 1910 Acts, last proviso). One of the 1868 Treaty benefits was a reservation for the "absolute and undisturbed use and occupation" of the Sioux. (See p. 3, *supra*.) This language fights the notion

that Congress simultaneously was terminating the reservation and renewing treaty promises to maintain the reservation. The court below ignored the "benefits" provision in the 1907 and 1910 Acts. As to the 1904 Act, the court stated that since the unratified 1901 "agreement" called for a cession, retaining reservation status would be inconsistent. (App. A, p. 15, fn. 21.) This answer has no validity. The 1901 "agreement" never took life. (See pp. 8-9, *supra*.)

d. The 1904 Act (sec. 2) and the 1910 Act (sec. 1) reserved land for agency, Indian school and religious purposes. (App. C-1, pp. 118-119; App. C-3, p. 124.) This is consistent with continuing the reservation status. The 1910 Act also reserved to the Tribe all land classified as timber. There is no reason to reserve timber land to a tribe on a terminated reservation. The court of appeals acknowledges the existence of the language but otherwise ignores it. (App. A, p. 47, fn. 101.)

e. Section 3 of the 1910 Act (App. C-3, p. 125) required the Tribe to make involuntary donations of up to 10 acres of tribal land for each townsite and 20% of the tribal proceeds from the sale of town lots for schools and public improvements in the towns. These charges against the Indians can be justified if the Indians shared in the benefits as enhancements to their reservation, but not if the reservation is dissolved. The court below is silent on the intent expressed by these forced donations of tribal land and money.

f. Each of the three Rosebud statutes contains language by which the United States acquired, without tribal consent, sections 16 and 36 for \$2.50 per acre and explicitly granted those sections to the State. (App. C-1, sec. 4, p. 120; App. C-2, sec. 6, p. 123; App. C-3, sec. 8, p. 127.) Section 10 of the South Dakota Enabling Act

provided that the grant of sections 16 and 36 did not extend to "any lands embraced in Indian * * * reservations," until "the reservation shall have been extinguished and such lands be restored to and become part of the public domain."²³ (See App. A, pp. 28-29.) Because the three Rosebud statutes did not extinguish the reservation and place the land in the public domain, it was essential to insert in each of the statutes language explicitly donating sections 16 and 36 to the State, otherwise the State would not have received the school sections. *Minnesota v. Hitchcock*, 185 U.S. 373 (1902). The school section language speaks against a construction of extinguishment.

The court of appeals, however, contrary to the plain language and controlling law, deemed the language to be "premised solely upon an understanding that the reservation would be extinguished, and is persuasive that such is the effect of the Act." (App. A, pp. 28-31, 53, see p. 31 for the quotation).

g. Section 10 of the 1910 Act (App. C-3, p. 127) extended the Federal Indian liquor laws, prohibiting the introduction of intoxicants into Indian country, to all land in the Mellette county portion of the reservation for 25 years, the term of the trust patents issued to allottees. This was done to overcome a decision of this Court, in effect from 1905 to 1916, holding that an Indian who received a trust allotment became a citizen free of the

²³This provision is not unique. The same language appears in the Enabling Act of the State of Washington involved in the case of *Seymour v. Superintendent*, 368 U.S. 351 (1962), and also in the Enabling Act of North Dakota involved in the Fort Berthold statute, which the court below held did not disestablish the reservation. *City of New Town, North Dakota v. United States*, 454 F.2d 121 (C.A. 8, 1972).

Indian liquor laws.²⁴ If section 10 had not been inserted, the protection of the Federal Indian liquor laws would not have covered allotted Indians while on land taken up by settlers. Such allottees would have been protected while on trust land because prior to 1948 (18 U.S.C. 1151), trust land was deemed Indian country, while fee land within an Indian reservation was not Indian country. *Clairmont v. United States*, 225 U.S. 551, 557-559 (1912); *Dick v. United States*, 208 U.S. 340, 359 (1908).

The district court, apparently unaware of the 1910 state of the law, reasoned that the presence of section 10 proved that the 1910 Act extinguished all Indian title, on the theory that otherwise there would be no need for section 10. (App. B, pp. 80-83, 90-92 in particular pp. 81-82.) The court of appeals, without pointing out the trial court's error, used comments made in the Congressional debates on the liquor issue as establishing the Congressional intent to dissolve the reservation status. (App. A, pp. 55-59.)²⁵ The court deemed "highly significant" (*idem.*, p. 59), statements made by members, other than the manager of the bill, reflecting a confused

²⁴*Matter of Heff*, 197 U.S. 488 (1905), ignored in *Hallowell v. United States*, 221 U.S. 217 (1911), and expressly overruled in *United States v. Nice*, 241 U.S. 591 (1916); Cohen, Felix S., *Handbook of Federal Indian Law*, p. 175 (GPO 1945).

²⁵The identical liquor provision appeared as section 13 of the Fort Berthold surplus land Act of June 1, 1910, c. 264, 36 Stat. 455, approved two days after the Rosebud 1910 Act. (App. D, Items 19, 20, p. 129.) The court below has held that the Fort Berthold act did not disestablish the reservation. *United States ex rel Condon v. Erickson*, 478 F.2d 684 (C.A. 8, 1973). By a 1909 amendment, the same language was added to the Flathead 1904 Act (App. D, Item 3, p. 129), Act of March 3, 1909, c. 263, 35 Stat. 781, 795; to the 1908 Fort Peck Act (App. D, Item 17), Act of March 3, 1909, *supra*, p. 796, and to the 1904 Yakima Act (App. D, Item 7), Act of May 6, 1910, c. 203, 36 Stat. 348.

understanding of Indian law. For example, members said "when the lands are sold there is no longer a reservation," or "if the lands are allotted it is no longer an Indian reservation" (*idem*, pp. 57, 58).

On the other hand, the court below quoted, but gave no weight to the answer of the manager of the bill, the committee chairman and member from South Dakota, who in the midst of the debate answered: "Yes, sir" when asked " * * * Mr. Chairman, this land, as I understand, is within the boundaries of an Indian reservation. Is that right?" (*Idem*, p. 58.)

h. Under section 2 of the 1907 Act (Tripp county) (App. C-2, p. 121), before the land was opened to settlers, the Secretary was authorized to allot 160 acres to each eligible Indian and to permit Indians already allotted to relinquish and receive an allotment anywhere "within the Rosebud Reservation." The committee reports explicitly stated that this latter provision included "the tract affected by this bill [Tripp county]." H. Rept. 7613, 59th Cong., 2d sess., p. 3 (1907); S. Rept. 6838, 59th Cong., 2d sess. (1907), adopting the House report. (R. App. III, pp. 277, 286.) An intent to terminate the reservation status of Tripp county land can hardly be reconciled with an explicit provision for allotments anywhere on the reservation, expressly including the land in Tripp county.

The court below undertook to explain away the allotment provisions saying they were intended to take care of only those 80 or so Indians who had received worthless allotments elsewhere on the reservation. (App. A, pp. 42-44.) The court of appeals apparently overlooked those legislative materials that reject any such limitation to the broad statutory language.

Those materials show that in December 1906 McLaughlin discussed two allotment problems with the Indians. One concerned allotted Indians who had received "worthless allotments." Those are the 80 allotments the court below referred to in the quoted excerpt from McLaughlin's letter of instructions written before he met with the Indians. (App. A, pp. 42-43 and fn. 87.) At the council proceedings, the Indians asked not only that the 80 dissatisfied allottees be taken care of but also that before the Tripp county land was opened, all unallotted children receive allotments. McLaughlin answered (App. E, Item 6, p. 134):

(Dec. 15, 1906) I can positively promise you that, in case we reach an agreement, it will provide for the allotment of lands to all children born since March 3, 1899, and they may be allotted in Tripp County and before the lands are opened.

* * * * *

You ask that those entitled to allotments, but have not yet taken them, be allotted, of which there are about 80 in all. In answer to that I will say there will be no difficulty in that. All beneficiaries of the reservation who have not yet received allotments can be allotted before Tripp County is opened to settlement, and they can take them anywhere on the reservation, including Tripp County. There will be a provision in the agreement to that effect.

Section 2 of the 1904 Act carried out McLaughlin's promises. Of the 1,083,680 acres in Tripp county, over 37% (406,081 acres) were still in trust allotments as of June 30, 1925. (App. E, Item 26, pp. 142-143). The court of appeals' 80-allotment explanation simply does not hold.

The court below placed great stock on phrases such as the sale would "leave your reservation a compact, and

almost square," "diminished reservation," "nice, square reservation" and the like. (See phrases collected in the opinion, App. A, p. 26.) All of these phrases originated with McLaughlin, not the Indians. They originated mainly in the pre-1904 Act negotiations when the parties were talking in terms of an outright sale and cession for a sum certain with the land to be placed in the public domain and disposed of under the public land laws. (App. A, pp. 12-14.)

When such phrases were used in committee reports or debates, it was in the context of the erroneous understanding that the land was being ceded, and the mistaken belief that the Indians had agreed to the sale or disposition of the land. (e.g., 1904 Act, App. A, p. 33,—"land that is proposed to be *ceded* by this bill; *idem*, p. 39—the bill "is in line with the recent bills * * * affecting the *sale* of the Indian reservations," also p. 40; 1907 Act, 41 Cong. Rec. 3104, February 16, 1907, R. App. III, p. 284, "The Indians * * * have agreed to the disposition of it [reservation] under the terms of the bill. They will have left, * * * a reservation that is substantially 50 miles square" (Only the latter sentence was quoted below (App. A, p. 41), omitting the misrepresentation of consent.); 1910 Act, App. A, p. 49, "The Indians themselves agreed to the provisions of this bill * * *."

The word "reservation" is used in the materials as descriptive, or as synonymous with land opened to settlers. The word was not used in the sense of terminating the reservation status from the standpoint of a tribe's sovereignty over its own people, or altering the political allegiance of reservation Indians (e.g., App. A, pp. 51-52, quoting the House report on the 1910 Act).

Statutes must be tested by their language and the legal effect of the language. This the court of appeals failed to do. The decision below turns on their heads the principles governing the construction of Indian statutes.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

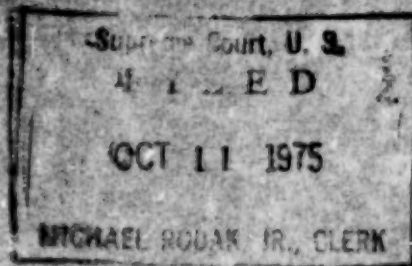
Respectfully submitted,

MARVIN J. SONOSKY

2030 M Street, N.W.
Washington, D.C. 20036

Attorney for the Petitioner.

October, 1975



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. **75-562** 1

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,

Respondents.

APPENDIX

MARVIN SONOSKY
2030 M Street, N.W.
Washington, D.C. 20036
Attorney for Petitioner.

(i)

TABLE OF CONTENTS

APPENDIX A	Opinion of the court of appeals	1
	Judgment of the court of appeals.	61
APPENDIX B	Opinion of the district court	63
	Judgment of the district court.	114
APPENDIX C-1	Act of April 23, 1904, c. 1484, 33 Stat. 254	115
APPENDIX C-2	Act of March 2, 1907, c. 2536, 34 Stat. 1230	121
APPENDIX C-3	Act of May 30, 1910, c. 260, 36 Stat. 443	124
APPENDIX D	Surplus Land Statutes Enacted 1904- 1913	129
APPENDIX E	Excerpts from Materials Relating to the History of the Rosebud Surplus Land Acts	131
APPENDIX F	Comparison of the 1901 Agreement and the 1904 Act	147

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 74-1211

Rosebud Sioux Tribe,
Appellant-Plaintiff,

v.

Honorable Richard Kneip, et al.,
Appellee-Defendant.

Appeal from the United States District Court
for the District of South Dakota.

Submitted: April 11, 1975
Filed: July 16, 1975

Before GIBSON, Chief Judge, BRIGHT, Circuit Judge,
and TALBOT SMITH,* Senior District Judge.

TALBOT SMITH, Senior District Judge.

The complaint before us seeks that we declare that the original "boundaries of the [Rosebud Indian] reservation as fixed by the 1889 Act, were not affected by the three 'surplus' land statutes of 1904, 1907, and 1910."¹ It

*TALBOT SMITH, Senior District Judge, Eastern District of Michigan, sitting by designation.

¹The Act of March 2, 1889, ch. 405, 25 Stat. 888, sometimes referred to as the "General Crooks" or the "Crooks" treaty,

[footnote continued]

follows, according to plaintiff's (hereinafter the Tribe's) theory that the areas involved, namely, all or parts of the Counties of Gregory, Tripp, Lyman and Mellette, in the State of South Dakota, remain a part of the Rosebud Reservation and are subject to the appropriate federal and tribal powers and jurisdiction.²

established and described the Rosebud Reservation as follows:

Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel to a point due south from the mouth of Black Pipe Creek; thence due north to the mouth of Black Pike[sic] Creek; thence down White River to a point intersecting the west line of Gregory County extended north; thence south on said extended west line of Gregory County to the intersection of the south line of Brule County extended west; thence due east on said south line of Brule County extended to the point of beginning in the Missouri River, including entirely within said reservation all islands, if any, in said river.

Id., §2, 25 Stat. 888.

By the Act of April 23, 1904, ch. 1484, 33 Stat. 254 [hereinafter the 1904 Act], the Act of March 2, 1907, ch. 2536, 34 Stat. 1230 [hereinafter the 1907 Act] and the Act of May 30, 1910, ch. 260, 36 Stat. 448 [hereinafter the 1910 Act] Congress opened for homesteading and sale all unallotted lands within the original reservation and in Gregory County (1904 Act), in Tripp and Lyman Counties (1907 Act) and in Mellette County (1910 Act). Todd County remains unopened.

For prior history see, *inter alia*, the treaty agreeing upon the establishment of the Great Sioux Indian Reservation, ratified by Congress on February 16, 1869: Treaty with Different Tribes of Sioux Indians, April 29 *et seq.*, 1868, 15 Stat. 635; and the Dawes Act, *infra* note 112.

²See generally 18 U.S.C. §1151(a); Dept. of the Interior, *Federal Indian Law* 12-13 (1958); *DeCoteau v. District County Court*, 95 S. Ct. 1082, 1085-86 (1975).

As originally delimited the Rosebud Indian Reservation contained over 3 million acres. Three-fourths of this area, all the original reservation outside Todd County, South Dakota, is involved in this action. The three Acts we are asked to construe disposed of all lands in this area which were not allotted to the Indians.³ Most of the unallotted lands were sold to homesteaders under the terms of the three Acts. About ninety percent of the present population in the disputed area is non-Indian.⁴ The defendants Kneip and Mydland, the Governor and Attorney General of South Dakota, assert that the area involved was settled and developed by non-Indians in partial reliance upon the removal of their lands from the exterior boundaries of the reservation,⁵ and that the Acts

³Fifty-eight percent of the 2.4 million acres outside Todd County were unallotted lands. See GAO Report, 4 App. at 467, 469, 471-72.

⁴15,661 non-Indians and 1641 Indians reside in Gregory, Mellette and Tripp Counties. U.S. Bureau of the Census, *Census of the Population: 1970; 1 Characteristics of the Population* Pt. 43, South Dakota, at 91, 92 (1973). Figures are unavailable for the small fraction of Gregory County which lies outside the disputed area and the small fraction of Lyman County which lies within the disputed area.

⁵That since the opening of such disputed area for homesteading, at the time hereinbefore set forth, for more than fifty years the white settlers and their successor in interest, people of Indian Descent, whether enrolled or not enrolled as members of the Rosebud Sioux Tribe, and the Plaintiff itself, until the commencement of this action, had considered such Congressional authorization to homestead, removed such disputed area from the boundaries of the Rosebud Sioux Indian Reservation, and returned such land to the United States of America, who, upon the granting of homestead rights and the issuance of a patent to such land to a white settler, relinquished exclusive jurisdiction over such patented land and authorized the

[footnote continued]

in question were intended to and did effectuate the alteration of the reservation boundaries to exclude the areas therein opened for settlement.

The court below rejected the Tribe's tendered theories in support of its argument that the boundaries of the reservation as defined in the Act of March 2, 1889 had not been changed. It held that the surrounding circumstances and legislative history of the Acts made it clear that it was the congressional intent to separate each of the counties concerned and to extinguish the reservation status of those counties. *Rosebud Sioux Tribe v. Kneip*, 375 F.Supp. 1065 (D. S.D. 1974). We agree and we affirm.

same to become an integral part of the State of South Dakota and the United States of America.

That no white person would have settled within, homesteaded, and applied and accepted a patent to land in the disputed area, were he to believe, or were he told at the time of so acting that his patented land remained within the boundaries of the Rosebud Sioux Indian Reservation, under the control of the Congress of the United States, any of its authorized agents, and any authorized tribal council or other governing body of the Rosebud Sioux Tribe.

* * *

As a result of such uniform and universal recognition that the disputed territory, settled by the whites, is a part of the State of South Dakota, and is excluded from the territorial boundaries of the Rosebud Sioux Indian Reservation, subsequent to homesteading and patenting, such disputed territory has been developed substantially through the energy, efforts, and moneys of such white settlers, their successors in interest, and the State of South Dakota and its political subdivisions, unaided by any effort of the Plaintiff.

Answer of Defendants Kneip and Mydland, 1 App. at 15-17.

In view of the many authorities cited to us, we deem it pertinent to note at the outset that they are of limited utility and we comment only on those deemed relevant to decision herein. Save as to broad generalities the holding in any particular case will depend upon circumstances applicable to that case, including among others, specific treaty or statutory provisions. Secretary Ickes, in his foreword to Cohen's *Handbook of Federal Indian Law*, speaks of "the complexity of the body of Indian law, based upon more than 4,000 treaties and statutes and upon thousands of judicial decisions and administrative rulings, rendered during a century and a half."⁶ Obviously, separate treaties and agreements with separate tribes must be separately construed.

It is clear from the reported cases that, despite numerous differences in specific fact situations, the overriding judicial inquiry remains unchanged, namely, the congressional intent. Thus in *Seymour v. Superintendent*, 368 U.S. 351, 356 (1961), in holding that the 1906 Act of Congress there involved did not extinguish the Colville Indian Reservation, the Court relied repeatedly on materials from which it "seem[ed] clear that the purpose of the 1906 Act was neither to destroy the existence of the diminished Colville Indian Reservation nor to lessen federal responsibility for and jurisdiction over the Indians having tribal rights on that reservation." *Mattz v. Arnett*, 412 U.S. 481, 505 (1973) utilizes the same test for disestablishment, namely, "A congressional determination to terminate * * * expressed on the face of the Act or * * * clear from the surrounding circumstances and legislative history." We are aware of course,

⁶Ickes, Foreword to F. Cohen, *Handbook of Federal Indian Law* v. (1942).

that much modern thinking respecting the culture and welfare of the Indians is at marked variance with that of the period we now survey, that around the turn of the century. But we do not sit to rewrite the legislation of decades past. We look to the congressional intent when it was written viewing the totality of the circumstances from the record in its entirety. The Tribe urges the lack of "express language extinguishing tribal title, or placing the land in the public domain, or altering the boundaries of the reservation." But here the Tribe misapprehends the applicable criteria.⁷ Precise verbal formulae of extinguish-

⁷The Tribe overlooks, as well, the language of cession in the 1904 Act:

cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota * * *.

1904 Act §1, 33 Stat. 256 (ratifying Article I of the 1901 Agreement). Such language could not be more "precisely suited" to relinquish all the Tribe's interest in the unallotted lands. See *DeCoteau v. District County Court*, 95 S. Ct. 1082, 1093 (1975) (hereinafter *DeCoteau*).

However, reliance may not ordinarily be placed upon dispositive terminology alone. Where we consider, as here, attempted legislative adjustment of contesting social forces the answer will not be found in the dictionary. It is settled that legislation of the general nature here under consideration is sufficiently ambiguous with respect to the effect on the boundaries of a reservation that the result in a particular case will depend upon its own facts. *United States ex rel. Condon v. Erickson*, 478 F.2d 684, 689 (8th Cir. 1973); see *DeCoteau*, 95 S. Ct. at 1093; *Mattz v. Arnett*, 412 U.S. 481, 505 & n.23 (1973). Thus in *Condon, supra*, the court was not compelled to its conclusion, that the reservation's boundaries were not altered, by the superficial similarity of the legislation there at issue to those acts held not to have altered reservation boundaries in *Seymour v. Superintendent*, 368 U.S. 351 (1962) and *City of New Town v. United States*, 454 F.2d 121

[footnote continued]

ment or alteration of boundaries, however apt or helpful, are not a *sine qua non* of disestablishment. We seek, as we said, the congressional intent, which may be variously expressed.

Our guidelines were most recently stated in *DeCoteau v. District County Court*, 95 S. Ct. 1082, 1092-93 (1975) wherein it was held:

This Court does not lightly conclude that an Indian reservation has been terminated. "[W]hen Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress." *United States v. Celestine*, 215 U.S. 278. The congressional intent must be clear, to overcome the general rule that "[d]oubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith." *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, at 174 quoting *Carpenter v. Shaw*, 280 U.S. 363, at 367. Accordingly, the Court requires that the "congressional determination to terminate . . . be expressed on the

(8th Cir. 1972). Despite the similarity in language, the court considered the matter a "close question" which it resolved against disestablishment only upon an analysis of the legislative history and surrounding circumstances that disclosed "[t]he Congressional intent underlying the 1908 Act with respect to the reservation's boundaries [to be] not clearly discernible * * *." *Condon, supra*, 478 F.2d at 687, 689.

Cases where the congressional intent "was that the reservation should continue to exist as such," *Seymour, supra*, p. 355, or *New Town, supra*, where the court was unable to find a congressional intent to disestablish are not, of course, inconsistent with the result we have reached. For (as will be fully developed herein), the defendants before us have demonstrated that a congressional determination to terminate lay behind each of the Acts in question.

face of the Act or be clear from the surrounding circumstances and legislative history." *Mattz v. Arnett*, 412 U.S., at 505. See also *Seymour v. Superintendent*, 368 U.S. 351, and *United States v. Nice*, 241 U.S. 591. In particular, we have stressed that reservation status may survive the mere opening of a reservation to settlement, even when the moneys paid for the land by the settlers are placed in trust by the Government for the Indian's benefit. *Mattz v. Arnett*, *supra*, and *Seymour v. Superintendent*, *supra*.

It is clear from *DeCoteau* that our inquiry may encompass all materials reasonably pertinent to the legislation,⁸ including the debates thereon and official correspondence with respect thereto, and administrative treatment of the area;⁹ as well as those bearing upon the historical context of its passage, such as the social forces then at work in the area and particularly the demands of our westward moving society arrayed against the con-

⁸The Tribe has submitted, with the court's permission, the maps contained in the Annual Reports of the Commissioner of Indian Affairs for the years 1904-1912. We find these materials inconclusive and unpersuasive as to congressional intent. From 1904 to 1908 none of Gregory County was designated "Indian Reservation" on said maps. From 1909 to 1917 Tripp County and the portions of Gregory and Lyman Counties within the original reservation, and from 1912 to 1917 Mellette County, were designated "Opened" reservation. After 1918 all the disputed areas were designated "Former Indian Reservation." Cf. *DeCoteau*, 95 S. Ct. at 1092 n.27.

⁹E.g., Letter from the Field Solicitor, Aberdeen, South Dakota, to the Director of the Aberdeen Area Office, Bureau of Indian Affairs, April 6, 1972, at 6, 4 App. at 478 expressing the opinion that "the legal boundaries of the Rosebud Indian Reservation have not been diminished or altered by Congress since the establishment of the original boundaries thereof * * *."

testing demands of the Indians for their culture and support.¹⁰

The original Rosebud Reservation was an area of great extent. Subsequent to its delineation, however, the "familiar forces" above noted came into operation. Gregory County, in particular, "had been anxious to acquire that portion of the Rosebud Reservation within its boundaries, ostensibly because the county government could not be maintained by the number of settlers on the small amount of non-reservation land available within it. After nearly two years, the county obtained the assistance of the very able congressional delegation from South Dakota, and under their direction the processes of acquisition were set in motion."¹¹

Opposed to such acquisition, however, stood not only the reservation area as fixed under the 1889 Act but, indeed, the way of life of the Sioux:

Over a vast tract of country the Teton Sioux ranged in historical times. The territory of Dakota, to which he gave the name of his nation, Dakota, —friends,— was his pasture and his hunting-ground, and he has been far removed from his allies and relatives, the Santees of the eastern bands, for many

¹⁰See *DeCoteau*, 95 S. Ct. at 1086: "But familiar forces soon began to work upon the [Indian reservation there under examination]. A nearby and growing population of white farmers, merchants, and railroad men began urging authorities in Washington to open the Reservation to general settlement." The Supreme Court there quotes a letter of banker Diggs to the Secretary of the Interior asserting the presence of the reservation to be "a great detriment to our interest, as it blocks the progress of two or three lines of railroad that we are very anxious to see completed." *Id.* at 1086 n.8.

¹¹Comment, *New Town Et AL: The Future of an Illusion*, 18 S.D. L. Rev. 85, 88 (1973) (Footnote omitted).

years. By the right of might and pre-emption, the Sioux had a kingdom for his back yard and an empire for his pasture. For hundreds of miles he had a free hand, and knew no bound when he rode west through the buffalo grounds on the far side of the Missouri, until he stopped to reconnoitre the country of the Crows on the west, and the home of the Piegiens, Bloods, and Blackfeet to the northwest.¹²

Obviously adjustments between these competing forces had to be made. It was Inspector McLaughlin who was assigned the first step in the desired acquisition of Gregory County, that of reaching agreement with the Sioux. He describes his mission, and its attainment, in the following terms:

Three years later [in 1901] I went to these same Indians with a proposition involving an agreement for the cession of a great body of land that was required for settlement by the whites. The land lay in Gregory County, South Dakota, and there were about four hundred and sixteen thousand acres in the tract. The deal was a big one, and there were many big talks. The Indian had come to a proper appreciation of the value of his holdings, and the government had not yet taken the position that there should be no appropriation for the purchase of the lands needed, that the government would only take over the lands and dispose of them to settlers, holding the funds in trust for the Indians, but guaranteeing nothing, except that there would be a fixed price per acre charged to the settlers. The

¹²J. McLaughlin, *My Friend the Indian* 263-64 (1910). The author, James McLaughlin, was United States Indian Inspector for the Department of the Interior, serving in such capacity for many years. He is the Inspector McLaughlin who is referred to in the briefs before us and who will be quoted by us hereinafter.

Rosebuds did not like the deal, and it was a case where I had to use personal influence to bring the agreement about. The people of South Dakota were very anxious to open the lands, and the rush to Bonesteel and the surrounding country resulting from this cession is still remembered. I talked to the chiefs and head men. I was well known to them, and they had confidence that I would not do anything that was opposed to their interest. But they were not easily moved. I made the agreement finally, securing the signatures to it September 14. The amount of money to be received by the Indians, under the terms of the sale, was \$1,040,000.¹³

The Rosebud Reservation was one of the smaller reservations¹⁴ which had been carved out of the Great Sioux Reservation by the Act of March 2, 1889.¹⁵ Section 12 of this Act provides:

Sec. 12. That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interest of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which said reservation is held of such portions of its reservation not allotted as such tribe shall, from time to time,

¹³*Id.* at 309.

¹⁴Another of these was the Pine Ridge Reservation, the boundaries of which were held, in *United States ex rel. Cook v. Parkinson*, No. Civ. 74-4023 (D. S.D. April 21, 1975) to have been diminished by the Act of May 27, 1910, ch. 257, 36 Stat. 440, removing Bennett County therefrom.

¹⁵Act of March 2, 1889, ch. 405, 25 Stat. 888, often referred to in the literature as the "General Crooks" or the "Crooks" treaty.

consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress: *Provided, however*, That all lands adapted to agriculture, with or without irrigation, so sold or released to the United States by an Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers, and shall be disposed of by the United States to actual and bona-fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education * * *.

25 Stat. 892.

Inspector McLaughlin, in early 1901, proceeded to the Reservation to undertake negotiations with the Indians. As he explained it to them on September 5, 1901:

I am here under orders of the Secretary of the Interior, who was authorized by Congress, at its last session, to negotiate, through any Indian inspector, with any Indian tribes for the cession of their surplus lands, and he has sent me here to negotiate with you for your surplus lands in Gregory County, that is, for all of your lands in Gregory County that have not been allotted to Indians. * * *

* * * *

*The cession of Gregory County will leave your reservation a compact, and almost square track, and would leave your reservation about the size and area of Pine Ridge reservation.*¹⁶

¹⁶*Proceedings of a Council with the Indians of Rosebud Reservation, September 5, 1901, in S. Doc. No. 31, 57th Cong., 1st Sess. 12 (1901), 2 App. at 18 (Emphasis added).*

Similar representations were made to other groups of Indians. Thus on April 13 to the Ponca Creek District of the Rosebud Reservation:

My friends, I have called to see you to-day for the purpose of ascertaining whether or not you are willing to sell the unallotted lands in Gregory County to the Government. * * * You doubtless know that there has been considerable talk for the past two years of negotiating with you people *for this corner of the reservation.* * * *

* * * *

In negotiating with Indians for tracts of land, a portion of which has been allotted to them, the privilege has been given the Indians to elect whether they shall remain upon their allotments or *relinquish their allotments and remove to the reservation.* I do not think that it is for the best interest of the Indians at any time to vacate their allotments. The lands that you have taken are, of course, the best lands of this county, and it is very doubtful if you could find as good land anywhere within the *diminished reservation* for the reason that the best lands have all been allotted.

* * * *

** * * If you dispose of this surplus land it will leave you about the same sized reservation as the Pine Ridge Indians have.* * * *

* * * *

** * * By disposing of this little corner of the reservation, it would leave you a nice, square reservation, and the proceeds of the sale would benefit you very much.*¹⁷

¹⁷*Proceedings of a Council with the Indians of the Ponca Creek District, Rosebud Reservation, April 13, 1901, in S. Doc. No. 31, 57th Cong., 1st Sess. 8-10 (1901), 2 App. at 16-17 (Emphasis added).*

Likewise to the Indians of the Big White River District on April 15, 1901:

Every person would have the privilege of remaining on the land that has been allotted to him, *or of relinquishing it and removing to the diminished reservation*, but I would advise you who have selected tracts of land to remain upon your allotments in case of the cession of this land to the Government.¹⁸

Response, in part, was made by Ralph Eagle Feather in the following terms:

We Indians intend to own the land, and have taken it in allotments, just as the President said to take it. We want payment for all vacant land left after that. After that the Indians of future generations can live upon the land and own it—that is, the lands within the *diminished reservation*, in case Gregory County should be ceded.¹⁹

Upon such representations and with such understandings, agreement was reached, on September 14, 1901, with the required three-fourths adult male Indians.²⁰ The agreement provided in substance for a

¹⁸*Proceedings of a Council with the Indians of the Big White River District, Rosebud Reservation, April 15, 1901*, in S. Doc. No. 31, 57th Cong., 1st Sess. 11 (1901), 2 App. at 17 (Emphasis added).

¹⁹*Proceedings of a Council with the Indians of Rosebud Reservation, September 5, 1901*, in S. Doc. No. 31, 57th Cong., 1st Sess. 21 (1901), 2 App. at 22 (Emphasis added).

²⁰The Treaty with Different Tribes of Sioux Indians, April 29 *et seq.*, 1868, 15 Stat. 635, which established the Great Sioux Reservation, required, for cession of any portion of the reservation, execution and signature by at least three-fourths of all the adult male Indians occupying or interested in the same. *Id.*, Art. XII, 15 Stat. 639.

cession of unallotted land within Gregory County in return for a lump-sum payment by the Government.²¹

²¹This agreement made and entered into on the fourteenth day of September, nineteen hundred and one, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

ARTICLE I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: * * *.

ARTICLE II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to expend for and pay to said Indians, in the manner hereinafter provided, the sum of one million and forty thousand (1,040,000) dollars.

* * * *

ARTICLE V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement.

ARTICLE VI. This agreement shall take effect and be in force when signed by U.S. Indian Inspector James McLaughlin and by three-fourths of the male adult Indians parties hereto, and when accepted and ratified by the Congress of the United States.

* * * *

The full text of the 1901 Agreement appears in the preamble to the 1904 Act, 33 Stat. 254-55.

We do not take the word "benefits" in Article V to have a fixed meaning applicable to all its uses. Here the original Agreement which the Tribe concedes would have "extinguished"

[footnote continued]

The language employed, "cede, surrender, grant and convey" leaves no doubt as to its meaning. There is a complete relinquishment of right, title, and claim. "It would be impossible," we have held of the words "ceded, conveyed, transferred, relinquished and surrendered," "to select words operating more completely to extinguish every vestige of Indian title, and releasing the government more absolutely from every obligation, moral as well as legal."²² So here. In fact the Tribe concedes that had the Congress adopted a bill simply ratifying the Agreement, "Indian title to the 'surplus' land would have been extinguished."

The negotiated Agreement, however, was never ratified.²³ The problem in the Congress was not jurisdiction, title, or boundaries. It was, simply put, money. The problem was first put thus by Senator Platt, who proposed to abandon the "free-homes" policy:

* * * It is true that several years ago—more than ten years ago, I think—in opening Indian reservations, we paid large and extravagant prices for land

Indian title had it been ratified, as well as the 1904 Act itself, provided that the Agreement should not deprive the Rosebud Indians of any "benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement." Since one of the "provisions of this agreement" was the cession of Gregory County, we cannot accept the Tribe's argument that consistently with the agreement it nevertheless remained entitled to a fixed boundary including Gregory County.

²²*United States v. Myers*, 206 F. 387, 392 (8th Cir., 1913); See note 7 *supra*.

²³In 1902 a ratification bill passed the Senate and was reported favorably in the House. 35 Cong. Rec. 5024 (1902) (S. 2992 passes Senate); H. R. Rep. No. 2099, 57th Cong., 1st Sess. (1902) (to accompany S. 2992). Because of the problem discussed below, the bill was never given consideration on the floor of the House. See text accompanying note 25, *infra*.

to the Indians, upon the theory that the Government was going to be reimbursed for its expenditures by the settlers paying for the land which they settled upon a sufficient sum to reimburse the Government. That went on for years, and everybody supposed that that was acceptable to the settlers. Then the settlers began to agitate that the Government should remit to them the obligation which they had incurred to pay for the land, and thereby reimburse the Government; and the history of that agitation of course is well known. The Government remitted about \$35,000,000 which it had paid to the Indians and which the settlers had agreed to repay to the Government by the passage of that free-homes bill.

35 Cong. Rec. 3188 (1902).

Further discussion in the same vein is found in 35 Cong. Rec. 4801-02 (1902):

[Mr. PLATT.] This is a bill for the opening of the Rosebud Reservation in South Dakota. I do not remember at this time the exact number of acres which are thus to be opened by the bill, but the price to be paid to the Indians is something over a million dollars. *The question is whether the Government, in opening the lands to settlement, shall give the lands thus purchased from the Indians to the settlers under the homestead law, or whether it shall require the settlers who take up these lands under the homestead law to pay for them a sum per acre equivalent to what the Government pays the Indians for them.* In other words, in opening the Indian reservations which already remain, what is to be the policy of the Government? Are we to pay the Indians a high price for the lands which we obtain a cession of, and then give those lands to settlers free of cost, or shall we require the settlers to pay as

much for the lands as will make up wholly for the amount which we have paid for them? That is the question, and Senators will see that it is a far-reaching question. [Emphasis added.]

* * * *

Now, the pressure for the opening of this land is great. I do not think anyone who does not live in the vicinity of those reservations understands how great it is. * * *

* * * *

Now, this particular agreement comes here to be ratified upon a payment to the Indians of about \$2.50 an acre for the surplus lands within their reservation which are under the agreement to be ceded to the United States and become a part of the public domain. The Indians in negotiating said that was not a fair price for the lands and they were worth a great deal more, but finally the negotiation was concluded. The agreement comes here. So far as the Senate considers it, it is an agreement to open a reservation—to pass ordinarily without any particular examination or any thought of the consequences to the Government in the matter of expense. I will not go into the history of the negotiations as to these lands, but the price paid or agreed to be paid to the Indians is \$2.50 an acre for the entire acreage which is to be brought under the public domain by cession to the United States.

The bill proposes that the land thus acquired shall be open to homestead settlement without requiring any payment for the land settled upon from the settler. My amendment proposes that the settler shall pay \$2.50 an acre, being the same which the Government has agreed to pay to the Indians, and that thus the Government shall be reimbursed for the amount expended for the purchase.

Senator Clapp opposed the Platt amendment, stating in part:

Here is this reservation in South Dakota. Of course the Senators from South Dakota can speak more specifically of the character of the reservation and its surroundings than I can; but because we have to pay the Indians a certain amount for that reservation, as a matter of progressive Indian policy, for the purpose of separating the Indians and extinguishing the reservation or for the purpose of meeting the advancing demands of civilization for the use of the lands, it does not follow that the land is primarily and inherently worth so much an acre [to settlers].

35 Cong. Rec. 4807 (1902).

Although the Platt amendment was defeated in the Senate,²⁴ the ratification bill languished in the House "because of the fact that it provided that the Government should pay for the lands outright."²⁵ New bills were introduced and reported from committee in both chambers which proposed "to adopt a new policy in acquiring lands from the Indians [by] providing that the lands shall be disposed of to settlers * * *, and to be paid for by the settlers, and the money to be paid to the Indians only as it is received * * * from the settlers."²⁶ The Senate bill passed but the 57th Congress expired before the House could give it consideration.²⁷

²⁴35 Cong. Rec. 4971 (1902).

²⁵38 Cong. Rec. 1423 (1904) (remarks of Congressman Burke). See S. Rep. No. 3271, 57th Cong., 2d Sess. 2 (1903); 36 Cong. Rec. 2748 (1903) (remarks of Senator Gamble).

²⁶H. R. Rep. No. 3839, 57th Cong., 2d Sess. 1-2 (1903) (to accompany H. R. 17467); S. Rep. No. 3271, 57th Cong., 2d Sess. 2 (1903) (to accompany S. 7390) (quoting House Report).

²⁷36 Cong. Rec. 2748 (1903) (S. 7390 passes Senate).

Thereafter, in June 1903, Inspector McLaughlin was instructed to return to the reservation to negotiate a new agreement in light of the "new departure" proposed by the latest Senate bill.²⁸ He explained the changes to the Tribe in the following terms:

My friends, I am very glad to meet you today. I have been sent here by the Secretary of the Interior

²⁸Letter from the Commissioner of Indian Affairs to James McLaughlin, U.S. Indian Inspector, June 30, 1903, at 1-2, 5, 7, 2 App. at 62-63, 66, 68:

In a joint request to the Department dated April 4, 1903, the members of the South Dakota delegation in Congress, Senators Gamble and Kittredge and Representatives Burke and Martin, asked that an Inspector be detailed to proceed to the Rosebud Indian reservation, in South Dakota, for the purpose of negotiating a new agreement with the Indians thereof for the cession of the unallotted portion of their reserve embraced in Gregory County, along the lines proposed in Senate Bill No. 7390, 57th Congress. * * *

The essential features of said S. 7390, with which you are already familiar, are as follows:

(1) That instead of paying the Indians the lump sum of \$1,040,000 for the surplus Gregory County lands as provided in the agreement of September 14, 1901, the lands be disposed of to settlers under the provisions of the homestead and town-site laws, excepting sections 16 and 36 or the equivalent thereof, at not less than \$2.50 per acre, the proceeds arising from such sale to be paid to the Indians.

* * * *

* * * The method proposed for disposing of these lands is a new departure, and it is therefore specially desirable that the matter should be thoroughly understood by the Indians before they enter into an agreement along the lines proposed * * *.

* * * *

[footnote continued]

to present to you a modification of the agreement we entered into two years ago, for your unallotted Gregory County lands.²⁹

There has been a sentiment growing in Congress for a number of years past, and is now stronger than ever, against paying Indians for ceded lands direct from the U.S. Treasury. This is what is referred to in my letter of instructions, which I read you, as being a new departure in the manner of disposing of the surplus lands of Indian reservations, and instead of paying Indians direct from the U.S. Treasury as heretofore for their surplus lands; they will be paid from the proceeds of the sale of lands ceded; the Department thus acting as trustee for the Indians, and the Interior Department having charge of the lands will dispose of them in such a manner as will secure to the Indians the highest price obtainable. This is the new departure referred to, and I believe, my friends, that no treaty will ever again be made

It is not deemed necessary herein to give you any definite instructions as to the form of the agreement and the manner of its execution inasmuch as you are thoroughly familiar with these features of the subject. Attention is invited in this connection, however, to Departmental instructions to you dated March 21, 1901, in connection with the negotiation of the former agreement.

The names of Charles H. Burke and Robert J. Gamble appear frequently in the documentation of the period. Mr. Burke was Congressman from South Dakota for many years, later serving as Commissioner of Indian Affairs. Mr. Gamble was Senator from South Dakota from 1900 to 1912. Comment, *New Town Et Al.: The Future of An Illusion*, 18 S.D. L. Rev. 85, 88 n.9 (1973).

²⁹Minutes of Council held at Rosebud Agency, S.D. with the Sioux Indians belonging on the Rosebud Reservation at 1, 2 App. at 70 (July 24, 1903).

with Indians, by which they will receive a lump sum consideration for the tract ceded, but only what the Government is able to realize from the sale of the lands.³⁰

*** I am here to try to enter into a new agreement, from which you will receive as for your lands as the agreement of two years ago provided, but the manner of disposing of it is different. ***

* * * *

*** The Government collects from the homesteader and pays it over to you.³¹

*** *I am here to enter into an agreement which is similar to that of two years ago, except as to the manner of payment ***. *** You will still have as large a reservation as Pine Ridge after this is cut off.*³²

*** The agreement which I submit for your consideration is similar in every respect to that of two years ago, except you will have to wait for the sale of the land to receive your money ***.³³

*** The [congressional] objections to the former agreement was not on account of the price, but to the manner of payment.³⁴

Inspector McLaughlin succeeded in obtaining a majority (though not three-fourths) consent to the new method of payment, provided that the price to homesteaders be raised from \$2.50 to \$2.75 per acre.³⁵ Within

³⁰*Id.* at 5, 2 App. at 74 (July 25, 1903).

³¹*Id.* at 12, 2 App. at 81 (July 29, 1903).

³²*Id.* at 21-22, 2 App. at 90-91 (July 30, 1903) (Emphasis added).

³³*Id.* at 37, 2 App. at 106 (August 8, 1903).

³⁴*Id.* at 50, 2 App. at 119 (August 10, 1903).

³⁵Agreement of August 10, 1903, 2 App. at 120-26.

nine months Congress passed a ratification bill which amended the 1901 Agreement solely with respect to the method of payment.³⁶ As a substitute for the lump-sum payment by the United States,³⁷ the 1904 Act provided that the Government would receive funds from the settlers as trustee for the Indians.³⁸ Homesteaders were

³⁶Act of April 23, 1904, ch. 1484, 33 Stat. 254.

³⁷1901 Agreement, Art. II, *supra* note 21.

³⁸Article II of the 1901 Agreement was amended to read as follows:

"ART. II. In consideration of the land ceded, relinquished, and conveyed by article one of this agreement, the United States stipulates and agrees to dispose of the same to settlers under the provisions of the homestead and town-site laws, except sections sixteen and thirty-six, or an equivalent of two sections in each township, and to pay to said Indians the proceeds derived from the sale of said lands; and also the United States stipulates and agrees to pay for sections sixteen and thirty-six, or an equivalent of two sections in each township, two dollars and fifty cents per acre."

1904 Act §1, 33 Stat. 256.

Section 6 of the 1904 Act provides:

That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein; or to guarantee to find purchasers for said lands, or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided.

33 Stat. 258.

These provisions are substantially identical to terms contained in the 1903 Agreement. Agreement of August 10, 1903, Arts. II, VI, 2 App. at 120-21, 23.

to pay substantially higher prices than those provided in the 1903 Agreement,³⁹ to insure that the Indians would receive as much under the new method as provided in the 1901 Agreement.⁴⁰

The Tribe stresses to us the lack of a three-fourths majority Indian consent to the 1904 Act (as well as the 1907 and 1910 Acts), referring at times to "unilateral" actions by the Congress. It should be noted, in this regard, however, that in January, 1903 the Supreme Court decided *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). The case concerned the validity of a cession of tribal lands enacted in contravention of a treaty requiring three-fourths Indian consent. The Court held:

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians. * * *

³⁹Four dollars per acre for lands entered within the first three months, three dollars per acre for lands entered during the second three months, and two dollars and fifty cents per acre for lands entered thereafter. 1904 Act §2, 33 Stat. 257-58.

⁴⁰See 38 Cong. Rec. 1423 (1904) (remarks of Congressman Burke).

* * * *

* * * In any event, as Congress possessed full power in the matter, the judiciary cannot question or inquire into the motives which prompted the enactment of this legislation. If injury was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought by an appeal to that body for redress and not to the courts. The legislation in question was constitutional, and the demurer to the bill was therefore rightly sustained.

187 U.S. at 566, 568 (Emphasis in original).

The effects of this decision, we note, were explained to the Indians by Inspector McLaughlin in 1903, 1906, and 1909.⁴¹ Consequently, it was clear that the vote of three-fourths of the adult male Indian population was no longer required as consent to cession of any portion of the Rosebud Reservation.⁴²

The 1904 Act, incorporating the entire text of the 1901 Agreement (save for the lump-sum provision) passed under the circumstances detailed in part heretofore, was obviously an outgrowth of and a continuation of the objectives of the 1901 Agreement. The terminology employed, language of diminution and extinguishment, was used interchangeably with respect both to

⁴¹*Minutes of a Council held at Rosebud Agency, S.D. with the Sioux Indians belonging on the Rosebud Reservation* at 5-6, 2 App. at 74-75 (July 25, 1903); at 11, 2 App. at 80 (July 29, 1903); at 23-24, 2 App. at 92-93 (July 30, 1903). *Proceedings of a Council held at Rosebud Agency, S.D. with the Indians of the Rosebud Reservation, December 14, 1906* at 10, 35, 3 App. at 185, 210. *Proceedings of a Council held with the Indians of the Rosebud Agency, April 21, 1909* at 4, 13, 15-16, 3 App. at 304, 313, 315-16.

⁴²See note 20 *supra*.

the proposed ratification of the 1901 Agreement and the passage of the 1904 Act.⁴³ Nowhere do we find, in the legislative history or materials from the period, any indication in substantial support of the claim now made by the Tribe that the exterior boundaries of the Reservation were to be left undisturbed despite the cession of the County of Gregory. The point at issue was method of payment for the land. Such was the subject of the extended discussion and debate. As for the reservation land itself, Gregory County was to be thrown open to settlers, and the reservation *pro tanto* extinguished. It is significant that from the inception of the negotiations preceding the original agreement reached, through those undertaken by Inspector McLaughlin upon his return with the proposed amendment, the parties were negotiating in terms that left no doubt that actual diminution was involved. The above-quoted language, "[y]ou will still have as large a reservation as Pine Ridge after this is cut off," "negotiating with you [Indians] for this corner of the reservation," "relinquish their allotments and remove to the reservation," "the diminished reservation," "leave you a nice, square reservation" "removing to the diminished reservation," "disposing of this little corner of the reservation" and "leave your reservation a compact, and almost square tract * * * about the size and area of the Pine Ridge reservation," admits of no other conclusion.

Whatever question there may be as to the proper interpretation of "diminished," that is, whether it means diminution by the carving out of a described area with concomitant change of boundaries, or a diminution by sale of lots to non-Indians without changing the bound-

⁴³See 35 Cong. Rec. 4807 (1902) (remarks of Senator Clapp) *supra* at 18; H. R. Rep. No. 443, 58th Cong., 2d Sess. 3 (1904) and S. Rep. No. 651, 58th Cong., 2d Sess. 3 (1904) (quoting House Report) *infra* at 33.

aries,⁴⁴ upon the facts before us it is clear that the parties contemplated a carving out process. Such descriptions of the effect of the negotiations, found in both pre-agreement and post-agreement materials as we have cited above, are persuasive as to intent. We observe, moreover, in this regard, the Supreme Court's recent and like employment of the term "diminished reservation" as involving a necessary and corresponding adjustment of reservation boundaries in a carving-out situation:

It is true that the Sisseton-Wahpeton Agreement was unique in providing for cession of all, rather than simply a major portion of, the affected Tribe's unallotted lands. But, as the historical circumstances make clear, this was not because the Tribe wished to retain its former Reservation, undiminished, but rather because the Tribe and the Government were satisfied that retention of allotments would provide an adequate fulcrum for Tribal affairs. In such a situation, exclusive tribal and federal jurisdiction is limited to the retained allotments. 18 U.S.C. § 1151(c). See *United States v. Pelican*, 232 U.S. 442. With the benefit of hindsight, it may be argued that the Tribe and the Government would have been better advised to have carved out a diminished reservation, instead of or in addition to the retained allotments. But we cannot rewrite the 1889 Agreement and the 1891 statute.

DeCoteau, supra, 95 S. Ct. at 1094.

The Court's suggestion that the parties "would have been better advised to have carved out a diminished reservation, instead of or in addition to the retained allotments" is particularly appropriate to the facts before

⁴⁴*United States ex rel. Condon v. Erickson*, 478 F.2d 684, 687 (8th Cir. 1973).

us in view of the 1904 Act under which, from the Tribe's original reservation, "all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County" was ceded, granted and conveyed to the United States,⁴⁵ clearly thus having "carved out a diminished reservation," leaving the Tribe with an "almost square tract," with necessarily altered boundaries.

The school lands provision of the 1904 Act is also relied upon by the defendants as showing congressional intent to disestablish Gregory County. The argument, applicable as well to the 1907 and 1910 Acts, *infra*, stems from the provisions of the Act of February 22, 1889, ch. 180, 25 Stat. 676, admitting the Dakotas into the Union. In pertinent part the Act provides as follows:

An act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, *and to make donations of public lands to such States.*

* * * *

SEC. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States * * * are hereby granted to said States for the support of common schools, * * *: Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants * * * of this act, *nor shall any lands embraced in Indian,*

⁴⁵1904 Act § 1, 33 Stat. 256 (ratifying Article I of the 1901 Agreement).

military, or other *reservations* of any character *be subject to the grants * * * of this act until the reservation shall have been extinguished* and such lands be restored to, and become a part of, the public domain.

25 Stat. 676, 679 (Emphasis added).

Section 4 of the 1904 Act provides in part:

That sections sixteen and thirty-six of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose * * *.

33 Stat. 258. The provision may be traced to a Senate committee amendment to the original ratification bill.⁴⁶ As Senator Gamble explained the amendment:

Under the provisions of the enabling act authorizing the admission of the State of South Dakota into the Union, sections 16 and 36 in every township were reserved for school purposes. This provision did not apply to permanent Indian reservations, but became operative when the Indian title was extinguished and the lands restored to and became a part of the public domain. This would withdraw about 29,000 acres of these lands and would leave 387,000 acres to be opened to settlement, and which would be affected by the proposed amendment.

35 Cong. Rec. 3187 (1902).

Similarly, in a colloquy between Congressman Finley and Congressman Burke, like explanation was made:

⁴⁶S. Rep. No. 662, 57th Cong., 1st Sess. 1 (1902).

Mr. FINLEY. Mr. Speaker, I observe that in section 4, reserving school lands, it is provided that the Government pay for those lands. Is that the usual appropriation that is put in all bills of this character?

Mr. BURKE. I am glad that the gentleman has asked me that question. I would state that under the enabling act under which the State of South Dakota was admitted to the Union it was provided that sections 16 and 36 in said State should be reserved for the use of the common schools of that State, and it further provided that as to the lands within an Indian reservation the provisions of that grant would not become operative until the reservation was extinguished and the land restored to the public domain. That enabling act was passed by Congress on the 22d day of February, 1889. In March of that same year Congress ratified a treaty with the Sioux Indians in South Dakota for the cession of something like ten or eleven millions of acres of land, and made an express appropriation, in accordance with provisions of the enabling act, to pay outright of the Treasury the money for sections 16 and 36 of that land at the price stipulated for in the treaty.

38 Cong. Rec. 1423 (1904). Further explanations of similar tenor will be found in both House and Senate reports.⁴⁷

In the light of the above there can be no reasonable doubt that it was the congressional intent to extinguish the reservation in Gregory County. The Tribe argues that the school lands grant in the South Dakota enabling act

⁴⁷H. R. Rep. No. 443, 58th Cong., 2d Sess. 2 (1904); S. Rep. No. 651, 58th Cong., 2d Sess. 2 (1904). See S. Rep. No. 3271, 57th Cong., 2d Sess. 2 (1903); H. R. Rep. No. 3839, 57th Cong., 2d Sess. 2 (1903); S. Rep. No. 662, 57th Cong., 1st Sess. 1, 2 (1902).

would operate automatically upon the extinguishment of a reservation and that since Congress thought it necessary in the 1904 Act to grant school lands to South Dakota, the reservation must not have been extinguished. But we cannot ignore the legislative history outlined above from which it is clear that Congress included the provision to implement the grant in the enabling act and for no other reason. Thus the action of Congress in passing section 4 of the 1904 Act was premised solely upon an understanding that the reservation would be extinguished, and is persuasive that such is the effect of the Act.⁴⁸

The argument of the Tribe that under the 1904 Act, as well as the 1907 and 1910 Acts, the Indian title to the lands "was not extinguished" rests in part upon the theory that under such Acts "the United States acted as trustee to dispose of the land and credit the proceeds to the Tribe." Thus, it is argued, Tribal title to the land was not extinguished, the Rosebud Reservation was not reduced by the said Acts, and the boundaries thereof were not altered.

The argument made will not withstand analysis in the light of the realities of the situation confronting the Congress at the time. The land was needed for settlement. The problem, as we have noted, involved payment therefor. It could be paid from the Treasury in a lump-sum as in *DeCoteau*, *supra*, where, after some per capita distribution, the balance was placed in trust,⁴⁹ or

⁴⁸Nothing said in *DeCoteau* relative to school lands suggests a contrary conclusion. See *DeCoteau*, 95 S. Ct. at 1093-94 n.33.

⁴⁹As passed by the Congress, the 1891 Act recited and ratified the 1889 Agreement with the Tribe and appropriated \$2,203,000 to pay the Tribe for the ceded land and to make good the Tribe's "loyal scout" claim. §27, 26 Stat. 1038. A portion of the moneys

[footnote continued]

it could be placed in trust as received from the settler-purchasers, as here.⁵⁰ Judge Bogue, in the *Cook* case, employs the apt terminology of "certain-sum-in-trust" method as opposed to "uncertain-sum-in-trust."⁵¹ Obviously, the Indians retain certain beneficial rights in both cases. If authority is needed therefor it is supplied by the *Ash Sheep* case.⁵² But the fact that a beneficial

was made available for immediate distribution to Tribal members on a per capita basis, and the remaining funds were, as had been agreed, "placed in the Treasury of the United States, to the credit of said . . . Indians [at five percent interest] . . . for the education and civilization of said bands of Indians or members thereof." § 27, 26 Stat. 1039.

DeCoteau, 95 S. Ct. at 1091.

⁵⁰1904 Act § 1, 33 Stat. 256-57 (amending Article III of the 1901 Agreement).

⁵¹*United States ex rel. Cook v. Parkinson*, No. Civ. 74-4023 (D. S.D. April 21, 1975), slip op. at 57.

⁵²*Ash Sheep Co. v. United States*, 252 U.S. 159 (1920) involved the status of land on the Crow Reservation in Montana subsequent to a cession agreement made, but prior to the opening of the land for settlement or entry. The agreement, "in terms, 'ceded, granted, and relinquished' to the United States all of their 'right, title and interest,'" under a trust relationship substantially identical to that in the instant case. 252 U.S. at 164, 165-66. The Court held in part that under these facts:

until sales should be made any benefits which might be derived from the use of the lands would belong to the beneficiaries and not to the trustee, and that they did not become "Public lands" in the sense of being subject to sale, or other disposition, under the general land laws. * * * They were subject to sale by the Government, to be sure, but in the manner and for the purposes provided for in the special agreement with the Indians, which was embodied in the Act of April 27, 1904, 33 Stat. 352, * * * Thus, we conclude, that the lands described in the bill were "Indian lands" when the company pastured its sheep upon them * * *.

252 U.S. at 166.

interest is retained does not erode the scope and effect of the cession made, or preserve to the reservation its original size, shape, and boundaries. The determination of disestablishment as we stated at the outset, rests upon congressional intent, as to which the method of payment, whether lump-sum or otherwise, is but one of many factors to be considered. Thus it was that the trust involved in *DeCoteau* had no more conclusive effect than the one here under consideration.

It was our holding in *United States ex rel. Condon v. Erickson*, 478 F.2d 684, 687 (8th Cir. 1973), which we here reiterate, that the changed method of payment above described " 'was simply a new method utilized by a Congress that no longer favored purchasing Indian lands and providing them free of cost to settlers.' " What had happened was simply that the Congress was through with purchasing Indian lands at great cost and providing them free to settlers. Thereafter the settlers would have to pay their way. The purchase money would inure to the benefit of the Indians, of course, and be held in trust for them, but the record is barren of any disclosed intention thereby to preserve intact the area of the original reservation and its boundaries. Such an intention is utterly foreign to the entire tenor of the contemporary materials before us. The land was being thrown open for farming. The settlers were emigrating in great numbers to the new land in the West, buying their farms and planting their crops. The Indian reservations were being eroded, not preserved. The final reports on the 1904 Act leave no doubt as to the congressional meaning and intent:

There is no question but what the Indians have no use for the land that is proposed to be ceded by this bill; that the tract is only a very small portion of the Rosebud Reservation, and is really only a corner of

*the reservation, which will be left compact and in a square tract and a reservation about equal in size to the Pine Ridge Reservation, in South Dakota.*⁵³

Our conclusions with respect to Gregory County are further supported by subsequent developments which culminated in the passage of the 1907 and 1910 Acts, to a consideration of which we will now proceed.⁵⁴

The forces at work for the opening of the Indian lands were not made quiescent by the Gregory cession. By 1906 the pressures for the opening of additional Indian lands in South Dakota were again being felt in the Congress. Responsive thereto, in early December, 1906, Senator Gamble and Congressman Burke, both of South Dakota, introduced separate bills providing for the opening of Tripp County.⁵⁵ Inspector McLaughlin was once again instructed to "enter into negotiations with the Rosebud Indians for the cession of the surplus unallotted land in Tripp County, South Dakota." The instructions continued, "You are familiar with the situation there and

⁵³H. R. Rep. No. 443, 58th Cong., 2d Sess. 3 (1904) (Emphasis added) and S. Rep. No. 651, 58th Cong., 2d Sess. 3 (1904) (Emphasis added) (quoting House Report).

⁵⁴Congressional action with reference to Gregory County shortly after the passage of the 1904 Act also confirms the conclusions. By the Act of February 7, 1905, ch. 545, 33 Stat. 700 Congress granted settlers an extension of time in which to establish their residence upon the opened Gregory County lands. The title and the body of the Act contain the following language:

lands which were *heretofore* a part of the Rosebud Indian Reservation within the limits of Gregory County, South Dakota.

33 Stat. 700 (Emphasis added). See S. Rep. No. 2760, 58th Cong., 3d Sess. 1 (1905); H. R. Rep. No. 4198, 58th Cong., 3d Sess. 1 (1905); 39 Cong. Rec. 1578 (1905) (remarks of Senator Gamble).

⁵⁵41 Cong. Rec. 15 (1906) (Burke bill, H.R. 20547); 41 Cong. Rec. 50-51 (1906) (Gamble bill, S. 6618).

for this reason it is not deemed necessary to give instructions in detail for conducting the negotiations. * * * The following would seem to be fair terms, similar to those in the disposal of the ceded lands in Gregory County, S.D. * * *."⁵⁶ Committee action on the bills was delayed pending the outcome of the negotiations,⁵⁷ which were conducted by the Inspector at Rosebud Agency on December 14, 15, 19 and 20, 1906 and again on January 17, 18 and 21, 1907.⁵⁸ The bill introduced by Congressman Burke formed the framework of the discussions.⁵⁹ To its proposals the Indians drafted counter proposals, providing, *inter alia*, for higher prices to homesteaders and for the accumulation of proceeds in an interest bearing fund.⁶⁰ A final agreement was reached January 21, 1907 and was ultimately signed by a majority (though not three-fourths) of the eligible Indians.⁶¹

⁵⁶Letter from F.E. Luepp, Commissioner of Indian Affairs to Inspector James McLaughlin, December 5, 1906 at 1, 2-3, 5; 3 App. at 166, 167-68, 170.

⁵⁷41 Cong. Rec. 3182 (1907) (remarks of Senator Gamble); Letter from E. A. Hitchcock, Secretary of the Interior, to Chairman Committee on Indian Affairs, House of Representatives, February 14, 1907, in H.R. Rep. No. 7613, 59th Cong., 2d Sess. 4 (1907).

⁵⁸*Proceedings of a Council held at Rosebud Agency, S.D. with the Indians of the Rosebud Reservation, December 14, 1906*, 3 App. at 176-269.

⁵⁹*Id.* at 2-3, 11, 12; 3 App. at 177-78, 186, 187.

⁶⁰*E.g., id.* at 43-47, 49; 3 App. at 218-22, 224.

⁶¹Letter from James McLaughlin to the Secretary of the Interior, February 12, 1907 at 1, 4, 3 App. at 270, 273; Letter from E. A. Hitchcock, Secretary of the Interior, to the Chairman Committee on Indian Affairs, House of Representatives, February 14, 1907 (enclosing agreement) in H.R. Rep. No. 7613, 59th Cong., 2d Sess. 5, 7 (1907).

Article I of the 1907 Agreement provides that the Indians,

for the consideration herein named and in the manner hereinafter provided, do hereby cede, grant, and relinquish to the United States all claim, right, title and interest in and to all that part of the Rosebud Indian Reservation lying South of Big White River and east of range twenty-five west, of the sixth principal meridian in South Dakota, except such portions thereof as have been, or may hereafter be, allotted to Indians * * *.⁶²

The United States was to purchase the school lands outright, and to act as trustee for the sale of the remaining lands to homesteaders at specified prices.⁶³ Provision was made for completing and changing the allotments to Indians, and for the deposition of the proceeds (including accumulation in an interest bearing fund).⁶⁴

The Secretary of the Interior recommended that Congress ratify the Agreement,⁶⁵ and on February 18, 1907 the Senate Committee on Indian Affairs reported a ratification bill as a substitute for the original Gamble bill.⁶⁶ By this time, however, the House had already debated and passed a second Burke bill which incorporated substantially the terms of the agreement without

⁶²Letter from E. A. Hitchcock, Secretary of the Interior, to the Chairman Committee on Indian Affairs, House of Representatives, February 14, 1907 (enclosing agreement) in H.R. Rep. No. 7613, 59th Cong., 2d Sess. 5 (1907).

The described area includes a small corner of Lyman County.

⁶³*Id.* at 5, 6, 7.

⁶⁴*Id.* at 6.

⁶⁵*Id.* at 4.

⁶⁶S. Rep. No. 6831, 59th Cong., 2d Sess. (1907).

reference to it.⁶⁷ Senator Gamble immediately steered the House bill through the Senate⁶⁸ and it passed without debate, with, however, an amendment which provided for five percent instead of three percent interest on the accumulated fund in conformity with the 1907 Agreement.⁶⁹ The Senate receded from its amendment in conference,⁷⁰ and the bill became law March 2, 1907.⁷¹

As noted, the House bill was not in form a ratification of the 1907 Agreement.⁷² In place of the Agreement's language of cession quoted above, the Act provides that the "Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell

⁶⁷41 Cong. Rec. 3103-05 (1907) (H.R. 24987); *see* H.R. Rep. No. 7613, 59th Cong., 2d Sess. 3 (1907).

⁶⁸On February 18 Senator Gamble brought the bill to the floor of the Senate and attempted its passage; objection was raised that it had not yet been to committee, and it was so referred. 41 Cong. Rec. 3182-83 (1907). Senator Gamble reported it from the Committee on Indian Affairs the next day, S. Rep. No. 6838, 59th Cong., 2d Sess. (1907), whereupon it passed the Senate. 41 Cong. Rec. 3323 (1907).

⁶⁹41 Cong. Rec. 3323 (1907); *see* 41 Cong. Rec. 3182 (1907); S. Rep. No. 6838, 59th Cong., 2d Sess. 1 (1907).

⁷⁰41 Cong. Rec. 3996 (1907).

⁷¹Act of March 2, 1907, ch. 2536, 34 Stat. 1230.

⁷²The following exchange occurred during the House debate:

Mr. FITZGERALD. The Commissioner of Indian Affairs recommended that all after the enacting clause be stricken out and the agreement be inserted and ratified. That has not been done, and that has not been the practice for several years. I wish to ask this question: Have the provisions of the treaty been inserted in this bill?

Mr. BURKE of South Dakota. I may say to the gentleman that they have been.

41 Cong. Rec. 3104 (1907).

or dispose of" the described unallotted lands.⁷³ With the exception of the reduction of the interest rate from five to three percent, the substantial terms of the Agreement are contained verbatim in the Act.⁷⁴ The Act contains additional language granting the school lands to the State of South Dakota,⁷⁵ and appropriating funds for the purchase of the school lands and for making the allotments provided therein.⁷⁶

The 1907 Act is, in substance, identical to the 1904 Act: Congress directs that, with the exception of school lands, the unallotted lands in the described tract be offered for sale to homesteaders at specified prices;⁷⁷ the United States is to act as trustee for the Indians to dispose of said lands and to collect and dispense the proceeds; and the United States is to purchase and convey the school lands to the State of South Dakota.

Nothing in the language of the 1907 Act or in the surrounding circumstances and legislative history indicates a change in that congressional determination to alter the reservation boundaries which we have found in the 1904 Act.⁷⁸

This continuity of purpose was expressed by Congressman Burke on the floor of the House:

⁷³1907 Act § 1, 34 Stat. 1230.

⁷⁴There are further differences between the Agreement and the Act which neither party has stressed.

⁷⁵1907 Act §§ 1, 6, 34 Stat. 1230, 1231.

⁷⁶1907 Act § 7, 34 Stat. 1231-32.

⁷⁷Six dollars per acre for lands entered within the first three months, four dollars and fifty cents per acre for lands entered during the second three months, and two dollars and fifty cents per acre for lands entered thereafter. 1907 Act § 3, 34 Stat. 1230-31.

⁷⁸Since the Tribe urges that the 1904 Act did not alter the boundaries, it does not contend that any change of purpose is evinced by the 1907 Act.

Mr. Speaker, the bill has the unanimous report of the Committee on Indian Affairs, in which committee it was very carefully considered. The bill is substantially in accordance with an agreement which has just been made with the Indians, signed by forty-two more than a majority of the male Indians over the age of 18 years. It is in line with the recent bills that have been passed affecting the sale of the Indian reservations. It is along the line of the bill which passed in the Fifty-eighth Congress for the sale of that portion of this same reservation that is located in Gregory County. The maximum price of the land in that bill was fixed at \$4 per acre, while the maximum price in this bill is \$6 per acre.

The Indians, as I have stated before, have agreed to the disposition of it under the terms of the bill. They will have left, after this land is disposed of, *a reservation that is substantially 50 miles square*, and there are only 5,000 Indians.

41 Cong. Rec. 3104 (1907) (Emphasis added).

The continuity is further evidenced by the House and Senate Reports which note that the "sale and disposition of the lands in Gregory County have proven very satisfactory" and are substantially completed.⁷⁹ These reports also cite as precedent supporting the school lands provision, all prior acts opening reservations in South Dakota (including the 1904 Gregory County Act).⁸⁰ The

⁷⁹H.R. Rep. No. 7613, 59th Cong., 2d Sess. 2 (1907); S. Rep. No. 6838, 59th Cong., 2d Sess. 1 (1907) (quoting House Report).

⁸⁰H.R. Rep. No. 7613, 59th Cong., 2d Sess. 3-4 (1907); S. Rep. No. 6838, 59th Cong., 2d Sess. 3 (1907) (quoting House Report).

As in 1904 the school lands provision was based on the South Dakota enabling act, and is further evidence of the intent to

[footnote continued]

1907 Act was clearly presented to Congress generally as one of a series of bills effecting the sale of Indian reservations, and specifically as a continuation of the process of diminishing the Rosebud Reservation begun with the 1904 Gregory County Act.

It is evident as well that this continuity was perceived by the Rosebud Indians. As the trial court observed, "[i]t is difficult for one to read the transcript of the negotiations in 1906 without feeling that this was merely a continuation of the original negotiation in 1901 which culminated in the Gregory County act, the 1904 Act, discussed above."⁸¹ We need simply note that the 1907 Agreement is similar in form to the 1901 Agreement, was negotiated between the same parties, and contains similar language of cession.

Further, the language and legislative history of the 1907 Act affirmatively indicate that the Act was intended to alter the reservation boundaries. That Gregory County was no longer considered within the boundaries of the reservation is clear from the description of the tract to be sold or disposed of under the 1907 Act, the purpose of which was "to authorize the opening and sale of that portion of the Rosebud Reservation in South Dakota known as Tripp County."⁸² Said tract is described as:

all that portion of the Rosebud Indian Reservation in South Dakota lying South of Big White River and

extinguish the reservation in Tripp County. H.R. Rep. No. 7613, 59th Cong., 2d Sess. 3-4 (1907); S. Rep. No. 6838, 59th Cong., 2d Sess. 3 (1907) (quoting House Report). See our discussion of the 1904 school lands provision, *supra* at 27-30.

⁸¹*Rosebud Sioux Tribe v. Kneip*, 375 F.Supp. 1065, 1075 (D. S.D. 1974).

⁸²H.R. Rep. No. 7613, 59th Cong., 2d Sess. 1 (1907); S. Rep. No. 6838, 59th Cong., 2d Sess. 1 (1907) (quoting House Report).

east of range twenty-five west of the sixth principal meridian * * *.⁸³

Not only Tripp County, but Gregory County would fall within this description unless it (Gregory County) was not considered a "portion of the Rosebud Indian Reservation." It clearly was not. As the House and Senate reports state:

[The 1904 Act authorized] a sale of so much of this same reservation as *was* located in Gregory County, the tract affected being about one-half the area embraced in the tract affected by the pending bill and lying immediately adjoining and east of Tripp County. [Emphasis added.]⁸⁴

These materials concerning the description of the tract affected by the 1907 Act not only provide a contemporaneous and authoritative construction of the 1904 Act which supports our interpretation thereof, but also directly indicate, in light of the continuity discussed above, that the 1907 Act was similarly intended to further construct the boundaries of the Rosebud Reservation.

This intent was given firm expression by Congressman Burke during the House debate, whose remarks are unambiguous:

They will have left, after this land is disposed of, a reservation that is substantially fifty miles square * * *.⁸⁵

⁸³1907 Act § 1, 34 Stat. 1230.

⁸⁴H.R. Rep. No. 7613, 59th Cong., 2d Sess. 1-2 (1907); S. Rep. No. 6838, 59th Cong., 2d Sess. 1 (1907) (quoting House Report).

⁸⁵41 Cong. Rec. 3104 (1907). Todd and Mellette Counties make up a generally square area, roughly fifty miles on a side.

The allotment provisions of the 1907 Act are asserted by the Tribe to support its position against disestablishment. The 1907 Act, provided, with respect to allotments, as follows:

That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation * * *.

1907 Act § 2, 34 Stat. 1230.

The Tribe argues that the provision respecting allotments "anywhere within said reservation," which then included Tripp County, clearly negates a congressional intent "to dissolve the reservation status of the Tripp county portion of the reservation" since, it argues, had dissolution been intended, Congress "hardly would have provided for 160 acre allotments anywhere on the reservation, including Tripp county."

The argument stems from a misinterpretation of the legislative history. Inspector McLaughlin's letter of instructions from the Commissioner of Indian Affairs stated that:

The Office is in receipt of a communication of November 22 from Hon. Charles H. Burke, wherein he says that he recently visited the Rosebud Reservation for the purpose of gaining information with a view to preparing a bill for the sale of that part of the reservation located in Tripp County; that he found that a large number of Indians had taken allotments in the western and southwestern parts of the reserve, on lands which are now, and always will be, worthless, being nothing but sandhills; that the Indians who have allotments in the reservation

elsewhere than in Tripp County should be permitted, in the discretion of the Secretary of the Interior, to relinquish them and to take allotments in lieu thereof in some other part of the reservation, including Tripp county * * *.⁸⁶

The Inspector, in negotiating with the Indians, accordingly informed them of their rights to reallocation anywhere on the reservation,⁸⁷ and the specific mention

⁸⁶Letter from F. E. Leupp, Commissioner of Indian Affairs, to Inspector James McLaughlin, December 5, 1906 at 4, 3 App. at 169.

⁸⁷[INSPECTOR McLAUGHLIN:] 8th. You ask that those entitled to allotments, but have not yet taken them, be allotted, of which there are about 80 in all. In answer to that I will say there will be no difficulty in that. All beneficiaries of the reservation who have not yet received allotments can be allotted before Tripp County is opened to settlement, and they can take them anywhere on the reservation, including Tripp County. There will be a provision in the agreement to that effect.

9th. You desire that applications now pending before the Indian Office asking to be permitted to change present location of allotments be acted on before the opening of Tripp County. I can promise to incorporate that provision in the agreement, and you people will be fully protected in that. As I previously stated, it would doubtless take a couple of years to bring about the opening of Tripp County. These allotments are what would delay it. We will incorporate in the agreement a provision that Tripp County shall not be opened until all the children born up to the ratification of the agreement, who have not received allotments, shall be allotted 160 acres each. These two items are already covered by the Burke Bill, which provides for relinquishments and reallocation and allotment to children, and giving the right to take such allotments in Tripp County.

Proceedings of a Council held at Rosebud Agency, S.D. with the Indians of the Rosebud Reservation, December 14, 1906 at 17-18, 3 App. at 192-93.

of Tripp County in this connection was to remedy, "before the opening of Tripp County," the prior taking of poor land. There is no negation here of congressional intent to disestablish. The entire tenor of the negotiations and the contemporary documents are consistent with a congressional intent to extinguish the reservation status of the County rather than the contrary.

After careful review we conclude that the language, legislative history and circumstances surrounding the passage of the 1907 Act, like the 1904 Act, clearly indicate a congressional determination to terminate the reservation in the counties affected by the Act.⁸⁸

Continued pressure for additional land, the "march of progress and civilization westward" in the language of the times, resulted in the passage of the Act of May 30, 1910, ch. 260, 36 Stat. 448. Unlike the 1904 Act and the 1907 Act, the 1910 Act was not preceded by formal negotiations and agreement with the Rosebud Indians. In the waning months of the 60th Congress Senator Gamble introduced and reported from committee a bill to open all the unallotted lands in Mellette County and in a strip

⁸⁸Subsequent enactments by the Congress itself provide an authoritative contemporary construction of the 1907 Act which supports this conclusion.

By the Act of August 17, 1911, ch. 22, 37 Stat. 21 Congress granted to "any person who has heretofore made a homestead entry for land in *what was formerly a part of the Rosebud Indian Reservation*, in the State of South Dakota, authorized by [the 1907 Act,]" an extension of time within which to make his payments. (Emphasis added.)

By the Act of January 11, 1915, ch. 8, 38 Stat. 792 Congress disposed of certain mineral lands "*in Tripp County in what was formerly within the Rosebud Indian Reservation* in South Dakota, as have heretofore been opened to settlement under Acts of Congress which did not authorize the disposal of such mineral lands * * *." (Emphasis added.)

of land in the eastern part of Todd County.⁸⁹ The bill was reported favorably despite the opinion of the Secretary of the Interior that "the views of the Indians should be procured before the bill is finally acted on," and his recommendation "that the strip of land on the east of *the present diminished reservation* should [not] be opened yet."⁹⁰ Senator Gamble was unable to obtain the Senate's consideration of the bill before the term of Congress expired,⁹¹ but shortly thereafter, in March and April, 1909, Inspector McLaughlin conducted discussions with the Rosebud Indians concerning the Gamble bill. At first the Indians were opposed to the bill,⁹² but later many expressed a willingness to part with Mellette County, provided the terms were favorable.⁹³ They remained opposed, however, to the opening of the eastern part of Todd County.⁹⁴ Inspector McLaughlin did not seek to negotiate an agreement with the Indians, but reported to the Secretary of the Interior his opinion that a "large majority" of the Rosebud Indians were

⁸⁹43 Cong. Rec. 65 (1908) (S. 7379 introduced); S. Rep. No. 887, 60th Cong., 2d Sess. (1909).

⁹⁰Letter from J. R. Garfield, Secretary of the Interior, to R. J. Gamble, U.S. Senate, January 26, 1909 in S. Rep. No. 887, 60th Cong., 2d Sess. 3 (1909) (Emphasis added).

⁹¹See 45 Cong. Rec. 1679 (1909).

⁹²*Transcript of Council held at Rosebud Agency, March 11, 1909*, 3 App. at 293-300. McLaughlin, formerly known to the Sioux as "White Head," was given a new name by High Pipe: "*The man who bothers his friends for more land.*" *Id.* at 4, 3 App. at 296.

⁹³*Proceedings of Council held with the Indians of the Rosebud Reservation, April 12 & 26, 1909* at 6-8, 11, 20-27; 3 App. at 306-08, 311, 320-27.

⁹⁴*Id.*

favorable to the opening of Mellette County under the provisions of the Gamble bill.⁹⁵

Both Congressman Burke and Senator Gamble introduced bills in the 61st Congress similar in purpose to the original Gamble bill.⁹⁶ In January, 1910 the Secretary of the Interior recommended that only Mellette County be opened but not the eastern part of Todd County.⁹⁷ He also proposed the inclusion of a provision (which will be hereinafter discussed) prohibiting the introduction of intoxicants into the affected lands.⁹⁸ The Senate bill was reported and passed with amendments implementing the Secretary's proposals.⁹⁹ It then passed the House with amendments and, after conference to reconcile House and Senate differences not material here, the bill became law May 30, 1910.¹⁰⁰

The 1910 Act is substantially similar to the 1907 Act. Its operative language is identical:

That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter

⁹⁵Letter from James McLaughlin to the Secretary of the Interior, April 29, 1909 at 4, 3 App. at 332.

⁹⁶44 Cong. Rec. 132 (1909) (S. 183); 44 Cong. Rec. 2013 (1909) (H.R. 9544); 45 Cong. Rec. 10 (1909) (H.R. 12437).

⁹⁷See Letter from R. A. Ballinger, Secretary of the Interior, to Moses E. Clapp, Chairman Committee on Indian Affairs, U.S. Senate, January 13, 1910 in S. Rep. No. 68, 61st Cong., 2d Sess. 4 (1910).

⁹⁸*Id.* at 5.

⁹⁹S. Rep. No. 68, 61st Cong., 2d Sess. (1910); 45 Cong. Rec. 1065, 1066, 1075 (1910).

¹⁰⁰Act of May 30, 1910, ch. 260, 36 Stat. 448; 45 Cong. Rec. 6437 (1910) (Conference Report passes House); 45 Cong. Rec. 6326 (1910) (Conference Report passes Senate); 45 Cong. Rec. 5473 (1910) (S. 183 passes House); see H.R. Rep. No. 429, 61st Cong., 2d Sess. (1910).

provided, to sell or dispose of all that portion of the Rosebud Indian Reservation [described by metes and bounds] except such portions thereof as have been or may be hereafter allotted to Indians * * *.¹⁰¹

The lands affected are those in the present day Mellette County, which lies north of Todd County and west of Tripp County.

It was provided that after allotments within the affected area had been completed, the lands should be opened to settlement and entry under the general homestead and town-site laws by proclamation of the President.¹⁰² Unlike the 1907 and 1904 Acts, which fixed the prices to be paid by homesteaders, the 1910 Act provided for the classification and "appraisement" of the lands and for their sale at the appraised prices. It also provided for the surveying of town-sites and the sale of town lots.¹⁰⁴

The Act also contained the familiar school lands provision by which the United States purchases and grants to South Dakota two sections in each township for the use of the common schools.¹⁰⁵ As in the 1904 and 1907 Acts, the United States was not otherwise obligated

¹⁰¹1910 Act §1, 36 Stat. 448-49; see 1907 Act §1, 34 Stat. 1230. The 1910 Act further excepts from sale lands classified as "timber lands," and authorizes the Secretary to reserve from sale lands "he may deem necessary for agency, school, and religious purposes." 1910 Act §1, 36 Stat. 449.

¹⁰²1910 Act §2, 36 Stat. 449.

¹⁰³1910 Act §§4, 5, 36 Stat. 450.

¹⁰⁴1910 Act §3, 36 Stat. 449-50.

¹⁰⁵1910 Act §8, 36 Stat. 451.

to purchase, but was to act as trustee for the purpose of sale and to collect and disburse the proceeds.¹⁰⁶

The 1910 Act contains two further provisions which, because of their language and history are of peculiar relevance to the problem before us. The first, a proviso in section 1 of the Act, permits an Indian who has taken an allotment "on the tract to be ceded" to substitute therefor an allotment "on the diminished reservation."¹⁰⁷ The second, section 10 of the Act, subjects the affected tract for twenty-five years "to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country."¹⁰⁸ These provisions will be discussed more fully below.

Again, we find nothing in the language of the 1910 Act or in the surrounding circumstances and legislative history which indicates a change in that congressional determination to alter the reservation boundaries which we have found in the 1904 and 1907 Acts.¹⁰⁹ We deem it unnecessary to detail *in extenso* the legislative history and surrounding circumstances evidencing the general continuity of purpose among the Rosebud acts.¹¹⁰ The sponsors of the 1910 Act placed the bill in the context of the westward expansion which began with the breakup of the Great Sioux Reservation:

Mr. GAMBLE. Mr. President, I have apologized many times for taking the time of the Senate, but twenty years ago practically the entire western half

¹⁰⁶1910 Act § 11, 36 Stat. 451-52.

¹⁰⁷1910 Act § 1, 36 Stat. 449.

¹⁰⁸1910 Act § 10, 36 Stat. 451.

¹⁰⁹See note 78 *supra*.

¹¹⁰*E.g.*, 45 Cong. Rec. 5456-57 (1910) (remarks of Congressman Burke).

of the State was an Indian reservation. It has been opened gradually and by degrees. The Indian reservations have stood as a menace to the development and the growth of the Commonwealth. The Indians themselves agreed to the provisions of this bill after it had been submitted to them for their consideration. The department agreed to it. It follows in line, Mr. President, with all of the measures providing for opening reservations in the Western States.¹¹¹

The only change in policy¹¹² noted during the debates was the change in the method of payment which was

¹¹¹45 Cong. Rec. 1074 (1910). The remark that the Indians had agreed to the provisions of the bill is, at best, an overstatement.

¹¹²The Dawes Act, the Act of February 8, 1887, ch. 119, 24 Stat. 388, expressed the philosophy of the era. It represented an effort to compromise the Government's responsibility to the Indians for their welfare, with the ever increasing pressures, to which we have heretofore made reference, for the opening of the land to settlers. It authorized allotments to the Indians and sale, with the tribes' consent, of the remaining "surplus" lands, the proceeds being reserved for the benefit of the Indians.

The chief advantages that the new system was to bring to the country as a whole were to be found in the opening up of surplus lands on the reservations * * *. In his report of 1880, [Interior] Secretary Schurz wrote:

"[Allotment] will eventually open to settlement by white men the large tracts of land now belonging to the reservations, but not used by the Indians. It will thus put the relations between the Indians and their white neighbors in the western country upon a new basis, by gradually doing away with the system of large reservations, which has so frequently provoked those encroachments which in the past have led to so much cruel injustice and so many disastrous collisions."

F. Cohen, *Handbook of Federal Indian Law* 208-09 (1942) (quoting Otis study) (footnote omitted).

instituted with the 1904 Act.¹¹³ McLaughlin's new name, "*The man who bothers his friends for more land,*" attests to the continuity as perceived by the Rosebud tribe.

¹¹³ As stated by Congressman Burke:

The original treaty made in 1889 with these Indians provided expressly that after the lands had been allotted to the Indians the surplus lands should then be disposed of under the provisions of the homestead law.

* * * *

I might say, Mr. Speaker, that there are two propositions to be considered in disposing of the unallotted and unused lands on Indian reservations. One is, at the earliest possible date, to get among the Indians the white man, and have those lands that are of no benefit to anyone, that are lying idle, doing no good, opened up and developed into farms, and I believe that the placing through *what were heretofore reservations* actual settlers will have the effect of civilizing the Indians who will have allotments and also give value to these allotments which at present are of very little value.

45 Cong. Rec. 5457 (1910) (Emphasis added).

Senator Crawford emphasized the new method of payment:

Mr. President, this bill was introduced by my colleague, and he is in charge of it, but it is one of interest to my State, * * *. I have lived in the West all my life, and I have lived in South Dakota half of my life. It was a Territory when I went there, and almost all of the west half of it was an Indian reservation, occupied by the Sioux Indians.

By treaties negotiated from time to time, and by laws enacted from time to time, the area of lands occupied by the Indians has gradually narrowed to smaller and smaller limits, until now the lands owned by the Indians are comparatively small in quantity. They are not lands which in their possession bring any revenue whatever. They do not cultivate them. There is neither fish nor game upon them. The policy of the

[footnote continued]

Further, there are clear indications in the legislative history of the 1910 Act that Congress understood that the 1904 and 1907 Acts had altered the reservation boundaries and that such would be the effect of the bill before it.¹¹⁴ Significantly, the Tribe offers no explanation of how the boundaries of the reservation could remain inviolate while the area contained therein was shrinking from 3,000,000 acres to 1,000,000 acres as outlined in the House report:

The Rosebud Indian Reservation when set aside as a separate reservation under the Sioux act of 1889 contained something over 3,000,000 acres of land. In 1904 the unused and unallotted portion of the reservation in Gregory County, about 500,000 acres, was disposed of and the Indians received therefrom something more than \$1,250,000. In the Fifty-ninth Congress a law was enacted authorizing the sale of the unused and unallotted lands in that portion of the reservation in Tripp County, compris-

Government toward the Indians and toward these lands has changed in more recent years simply in this respect—that the lands be sold and the proceeds made into a trust fund, the principal forever held inviolate and the income from which is devoted to the Indians.

When these lands under this bill and similar bills are thrown open to settlement, the Indian first selects by allotment the portion he is allowed to take upon the abandonment of his tribal relations, and the balance is sold to the settler, who must first make entry and settlement and comply with the provisions of the law and then pay the Government, and the proceeds go into the fund for the Indians.

45 Cong. Rec. 1068 (1910).

¹¹⁴ Thus we need not rely merely on such references to "the present diminished reservation" or to "what were heretofore reservations" as appear with some frequency throughout the 1910 materials and some of which we have quoted above with emphasis.

ing about 1,000,000 acres, under a bill substantially in the same form as the bill now under consideration, except that the price of the land was fixed in the law, whereas under this bill the price is to be fixed by appraisement. The proclamation for the disposition of Tripp County lands was not issued until last year, and therefore it was not subject to filing until that time. A very large part of the lands has been entered under the homestead laws, but it is not possible to state just how much will be received from the sale of the lands in Tripp County; it will, however, undoubtedly amount to \$4,000,000.

The area comprised in the present bill is about 800,000 acres and the proceeds from the sale thereof, under the terms of the bill, will probably amount to \$3,000,000. There will still be left a reservation containing about 1,000,000 acres, and as the Indians have all been allotted there is no occasion for continuing a reservation larger than it will be when Mellette County is disposed of.

H.R. Rep. No. 429, 61st Cong., 2d Sess. 2 (1910).¹¹⁵ We

¹¹⁵The Senate report similarly contemplates a change in the size of the reservation:

The *present* area of the Rosebud Indian Reservation aggregates about 1,800,000 acres. The lands proposed to be opened to settlement under the provisions of this bill embrace an area of about 830,000 acres. It is the understanding of your committee that practically all the allotments to adult Indians on this reservation have been made. Provision has been made under recent statutes for the allotment of all the minor children on the reservation, and this work is now in progress and it is understood that practically all such allotments have been made to those so desiring allotments within the area described in section 1 of this bill.

The reservation is yet large, and in the judgment of your committee the surplus and unallotted

[footnote continued]

agree with the trial court¹¹⁶ that this statement affords strong support for the conclusion that the three acts before us altered the reservation boundaries.¹¹⁷

We have discussed heretofore the school lands provision of the 1904 and 1907 Acts. The provision before us, section 8 of the 1910 Act, is substantially identical to those of 1904 and 1907. It was similarly justified as required to "keep good the pledge" in the South Dakota enabling act,¹¹⁸ and is further evidence that the 1910 Act was intended to extinguish the Reservation in Mellette County.¹¹⁹ Two other provisions unique to the 1910 Act, the substitute allotment provision and the intoxicants provision, confirm this conclusion.

Section 1 of the 1910 Act contains the following proviso:

Provided, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered

lands are unnecessary for the use of the Indians, and the opening of the reservation would result in a large increase in the settlement and the development of that part of the State, and would enhance to a very large extent the holdings of the Indians.

S. Rep. No. 68, 61st Cong., 2d Sess. 2 (1910) (Emphasis added).

¹¹⁶*Rosebud Sioux Tribe v. Kneip*, 375 F.Supp. 1065, 1079 (D. S.D. 1974).

¹¹⁷While not technically evidence of congressional intent in 1904 and 1907, the statement is an authoritative contemporary construction of the two prior acts.

¹¹⁸45 Cong. Rec. 1068 (1910) (remarks of Senator Crawford). See S. Rep. No. 68, 61st Cong., 2d Sess. 3 (1910); H.R. Rep. No. 429, 61st Cong., 2d Sess. 2 (1910); 45 Cong. Rec. 1067-68, 1071 (1910) (remarks of Senators Davis and Crawford); 45 Cong. Rec. 5472 (1910) (remarks of Congressman Burke).

¹¹⁹See our discussion at 27-30, *supra*.

for sale, relinquish same and select allotments in lieu thereof on the diminished reservation * * *.

36 Stat. 449. The Tribe urges that "diminished reservation" refers to Mellette County;¹²⁰ it argues that this proviso and the clause requiring the completion of allotments in Mellette County¹²¹ indicate an intent to continue Mellette County as a reservation. In the light of the history of this legislation, and its background,¹²² we do not think the fact that Indian allottees would continue to live in Mellette County is persuasive to the point that the county would remain within the reservation. Further we find that the phrase "diminished reservation" in context is distinguished from "the tract to be ceded," and that it clearly refers to Todd County, the remaining unopened reservation.¹²³ This statutory use of

¹²⁰See *United States ex rel. Condon v. Erickson*, 478 F.2d 684, 687 (8th Cir. 1973).

¹²¹Section 2 of the 1910 Act contains the following proviso:

Provided, That prior to said proclamation [opening the reservation] the allotments within the portion of the said Rosebud Reservation to be disposed of as prescribed herein shall have been completed * * *.

36 Stat. 449.

¹²²E.g., the Act of March 2, 1889, ch. 405, 25 Stat. 888, the "Crooks Treaty" which carved the Great Sioux Reservation into separate smaller reservations. Under the terms of the Act Indians who had taken allotments on lands in the area between the described reservations were permitted to remain there, although the area was restored to the public domain and opened to settlement. *Id.* §§ 15, 21, 25 Stat. 893, 896.

¹²³This contrasts with the language and history of the 1907 Act discussed *supra* at 42-44. We note that when a similar provision was inserted in a subsequent bill proposing the opening of Todd County, the Department of Interior recommended its excision, stating:

If the bill becomes law, it will provide for opening all the lands now constituting the diminished Rosebud

[footnote continued]

the phrase "diminished reservation" confirms our view that the reservation was "diminished" in a geographical sense (by an alteration of the boundaries) and not in the weaker sense urged (by the loss of tribal title to lands remaining within the reservation).¹²⁴

We also find it significant that although the 1910 Act does not contain the language of cession found in the 1904 Act, it nevertheless refers to Mellette County as "the tract to be ceded." Evidently Congress had not changed its purpose and still considered the 1910 Act to effect a cession of Indian lands.

Section 10 of the 1910 Act provides:

That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, granted to the State of South Dakota, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.¹²⁵

In 1910 there was an outstanding federal prohibition against the introduction or attempted introduction of intoxicants into "Indian country."¹²⁶

Reservation, and there will, therefore, remain no further diminished reservation.

Letter from S. Adams, First Assistant Secretary, Dept. of the Interior, to R. J. Gamble, Chairman Committee on Indian Affairs, U.S. Senate, April 30, 1912 in S. Rep. No. 1166, 62nd Cong., 3d Sess. 4 (1913).

¹²⁴See our discussion of this point in connection with the surrounding circumstances and legislative history of the 1904 Act *supra* at 26-27.

¹²⁵36 Stat. 451.

¹²⁶Act of July 23, 1892, ch. 234, 27 Stat. 260; see generally Dept. of the Interior, *Federal Indian Law* 381-82, 386-87, 390 (1958).

The trial court held that thus subjecting the Mellette County land to the liquor proscription applicable to "Indian country" manifested a congressional intent that the County would henceforth not be Indian land, since, if it were, there would be no need for the proscription.¹²⁷ The court also noted the power of Congress to impose liquor restrictions on ceded lands adjoining Indian country in order to prevent white-Indian border traffic in liquor.¹²⁸ The Tribe takes the contrary view, arguing principally that in view of the 1910 construction of "Indian country," Section 10 was intended not to diminish but to enlarge "the protection attaching to the reservation." Assuming, *arguendo* only, a possible ambiguity in the statute, we turn again to the legislative history for the congressional intent.

Section 10, modeled after the provision in a congressionally ratified cession agreement with the Nez Perce Indians which was upheld by the Court in *Dick v. United States*, 208 U.S. 340 (1908),¹²⁹ was vigorously debated in the House.¹³⁰ Its opponents contended that under *In re Heff*, 197 U.S. 488 (1905)¹³¹ the provision was *ultra vires* since the Rosebud Indians, by taking allotments, had become citizens of the United States subject to the

¹²⁷*Rosebud Sioux Tribe v. Kneip*, 375 F.Supp. 1065, 1080 (D. S.D. 1974).

¹²⁸*Id.*

¹²⁹See Letter from R. A. Ballinger, Secretary of the Interior, to Moses E. Clapp, Chairman Committee on Indian Affairs, U.S. Senate, January 13, 1910 in S. Rep. No. 68, 61st Cong., 2d Sess. 5 (1910); H.R. Rep. No. 429, 61st Cong., 2d Sess. 3 (1910); 45 Cong. Rec. 5473 (1910) (remarks of Congressman Burke).

¹³⁰45 Cong. Rec. 5460-64, 5473 (1910).

¹³¹*Heff* was overruled by *United States v. Nice*, 241 U.S. 591, 601 (1916).

laws of South Dakota and free from the police power of Congress.¹³² The proponents, on the other hand, considered the provision a valid condition on the sale of the land and were corrected when they referred to the land as on or within the boundaries of the reservation:

Mr. GOEBEL. I am opposed to attaching to the sale of any reservation conditions such as are proposed in this bill.

Mr. GRONNA. Does the gentleman believe it would be safer on a reservation where liquors are permitted to be sold? Would the gentleman not buy land on a reservation where protection is given by the Government, even if such reservation is located in a prohibition State?

Mr. GOEBEL. Oh, I do not know what I would do. At present I would want to get the land without any conditions attached. *You must also bear in mind that when the lands are sold there is no longer a reservation*, and the laws of the States apply.

* * * *

Mr. BUTLER. * * * The Indian should not be tempted, if it is possible to keep the tempter away from him. Rum should not be sold to him, and no one should be permitted or encouraged to make the sale to him. I can see no reason why the Government should not impose this condition upon this land.

Mr. MURPHY. Then we ought to make this just as strong as possible, ought we not?

Mr. BUTLER. Yes, sir. Make it as strong as possible. You can not make it too strong for me. Mr. Chairman, this land, as I understand, is within the boundaries of an Indian reservation. Is that right?

¹³²45 Cong. Rec. 5460, 5462-64 (remarks of Congressmen Bartholdt and Goebel).

Mr. BURKE of South Dakota. Yes, sir.

Mr. BUTLER. It is proposed now to make a sale of it to somebody of some color, white or black, it does not matter. This being so, the Government has the right to impose at this time upon these titles this condition.

Mr. BARTHOLDT. *But if the lands are allotted it is no longer an Indian reservation.*

Mr. BUTLER. *If the lands are allotted it will be no longer an Indian reservation. If the land is sold it will be no longer an Indian reservation. It is where, as I understand, the Indian has always lived and where he is going to live, and I believe in keeping the sale of liquor out of his neighborhood * * *.*

45 Cong. Rec. 5463-64 (1910) (Emphasis added).

It is highly significant that the proponents of the Section 10 acceded to the contention that the lands would no longer be an Indian reservation, and justified their position with the same argument used in *Dick*, *supra*—that the lands were in the neighborhood of the Indian where he would be likely to frequent.¹³³ There

¹³³In *Dick* the Court upheld the intoxicant provision as an exercise of Congress' treaty-making power and its power to regulate commerce with the Indian tribes. *Dick v. United States*, 208 U.S. 340, 359 (1908). The Court quoted *United States v. Forty-three Gallons of Whiskey*, 93 U.S. 188, 195 (1876):

"If liquor is injurious to them inside of a reservation, it is equally so outside of it, and why cannot Congress forbid its introduction into a place *near by*, which they would be likely to frequent?" * * * "If Congress has the power" * * * "to punish the sale of liquor anywhere to an individual member of an Indian tribe, why cannot it also subject to forfeiture liquor introduced for an unlawful purpose into territory in proximity to that where the Indians live? There is no reason for the distinction" * * *. [Emphasis in original.]

[footnote continued]

can be no doubt here as to intent. Both sides are explicit "that when the lands are sold there is no longer a reservation." Section 10 and its legislative history reflect a congressional understanding that the effect of the 1910 Act would be to terminate the reservation status of the Mellette County lands.

What we find here is the continuation of the policy, heretofore adopted and implemented, of reducing the size of the Rosebud Reservation in order to make a portion of its lands available to the new settlers. Again, the congressional motivations are clear, as is its intent.¹³⁴

The Tribe has sought that we declare that the Acts of 1904, 1907, and 1910 did not alter the boundaries of the Rosebud Reservation as fixed by the General Crooks treaty of 1889. This we cannot do. We have reviewed with care the pressures for opening,¹³⁵ the legislative

340 U.S. at 357. See generally Dept. of the Interior, *Federal Indian Law* 385 (1958).

Dick was specifically relied on by Congressman Burke in the debate, 45 Cong. Rec. 5473 (1910).

¹³⁴A subsequent enactment regarding Mellette County confirms this conclusion. By the Act of March 3, 1919, ch. 110, 40 Stat. 1320 Congress authorized the sale for cemetery purposes of a described "ten-acre tract within the former Rosebud Indian Reservation in Mellette County, South Dakota." (Emphasis added.)

¹³⁵The scenes upon opening are described in Smith, *New Town Et Al: A Reply*, 18 S.D. L. Rev. 327, 332-33 (1973), and are indicative of the public pressures existing at the time:

By the time of the "opening" of Gregory County, congressional desire for Indian lands was reaching a crescendo. The Gregory County Act provided for approximately 2,412 homesteads of 160 acres each. About a quarter of a million people descended upon the local land offices at Bonesteel,

[footnote continued]

histories of the Acts, their content, provisions, and contemporaneous construction, as well as their subsequent treatment and interpretation. Against this background it is clear beyond reasonable question that the Acts were passed with the intent of doing away with the Reservation in those portions affected by the opening of the lands for entry and settlement. The boundaries were thus necessarily altered.

The problems before the Congress at the turn of the century with respect to the western lands permitted no easy solutions. The choices were difficult but they were

Fairfax, Chamberlain, and Yankton, and 106,308 of these completed applications to be eligible for these 2,412 homesteads. At the Yankton Office, where 57,434 applications were filed,

the crowds . . . broke all previous records. Hundreds slept in line at the land office, day and night, for a considerable time, to be in readiness to make their filings. On one day in July nearly seven thousand people were thus registered. It was estimated that nearly one thousand people were in line one morning at one time, having slept there all night. At 4 o'clock in the morning the lines were joined by 1,000 more until they extended one block and a half from one office and nearly as far . . . at another office. A carload of ready eatables came from Sioux City and was sold to the men waiting in line. The rush in the city and especially on the trains was something that had never been witnessed before in this state.

The same is true for the Tripp County and Mellette County Acts. A total of 114,769 persons applied for 4,000 homesteads in Tripp County and a similar occurrence was the story of Mellette County. [Footnotes omitted.]

made by the representatives of the people and it is not our function to fashion a wiser course under the guise of interpretation.

Affirmed.

A true copy

ATTEST:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

JUDGMENT

(Filed July 16, 1975)

Appeal from the United States District Court for the District of South Dakota

This Cause came on to be heard on the record from the United States District Court for the District of South Dakota and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

APPENDIX B

[1065]

ROSEBUD SIOUX TRIBE

v.

Hon. Richard KNEIP, Governor of the
State of South Dakota, et al.

No. Civ. 72-3030.

United States District Court,
D. South Dakota.

Feb. 6, 1974.

Declaratory judgment action by Indian tribe seeking declaration that three specific acts of Congress did not diminish the Rosebud Sioux Reservation or alter its boundaries. The District Court, Bogue, J., held that conclusion was required from surrounding circumstances, including congressional history, that the three acts in question did diminish the Rosebud Sioux Reservation, and that South Dakota could exercise jurisdiction over Indian people in counties of Gregory, Tripp, Mellette, and what was Lyman.

Judgment accordingly.

1. Indians ☞3

Intent to abrogate treaty rights is not lightly imputed to Congress.

2. Indians ☞12

Congress having once established Indian reservation, all tracts remain part of that reservation until separated therefrom by Congress.

3. Indians ☞12

Congressional intent to disestablish Indian reservation must be either ex-

pressed on face of act or be clearly discernible from surrounding circumstances and legislative history.

4. Indians ☞12

Opening Indian reservation for settlement by homesteading is not necessarily inconsistent with its continued existence as a reservation.

5. Indians ☞27(2)

Generally, Indians are to be left free from state jurisdiction and control, and federal jurisdiction is preferred.

[1066]

6. Indians ☞3, 6

Courts must construe treaties and statutes passed for the benefit of Indians and Indian tribes liberally, and wherever possible resolve any doubt in favor of the same.

7. Indians ☞12, 27(2)

In view of surrounding circumstances, including congressional history, conclusion was required that three acts of Congress, passed in 1904, 1907, and 1910, were intended to diminish the Rosebud Sioux Reservation, and that the state of South Dakota could exercise jurisdiction over Indian people in the counties of Gregory, Tripp, Mellette, and what was Lyman. Treaty with the Sioux Indians, 15 Stat. 635; Act Feb. 22, 1889, § 10, 25 Stat. 676; Act March 2, 1889, 25 Stat. 888; Act April 23, 1904, 33 Stat. 254; Act March 2, 1907, 34 Stat. 1230; Act May 30, 1910, 36 Stat. 448; 43 U.S.C.A. § 865.

Richard A. Smith, Mark V. Meierhenry, Rosebud, S. D., for plaintiff.

C. J. Kelly, Asst. Atty. Gen., State of South Dakota, Pierre, S. D., William F. Day, Jr., Winner, S. D., for defendants.

MEMORANDUM OPINION

BOGUE, District Judge.

The Rosebud Sioux Tribe has brought this declaratory judgment action pursuant to 28 U.S.C. § 2201 et seq. seeking declarations that three specific acts of Congress did not diminish the Rosebud Sioux Reservation or alter its boundaries from those defined in the act of March 2, 1889. The defendants, the State of South Dakota and the counties of Mellette, Lyman, Tripp and Gregory, assert that the three acts did diminish the Rosebud Reservation so that that reservation presently embraces only Todd County, South Dakota. Acting on this assertion, the defendants have been exercising both civil and criminal jurisdiction over members of the Rosebud Sioux Tribe within the counties of Mellette, Lyman, Tripp and Gregory. The plaintiff does not seek a declaration of the exact nature of the jurisdiction, or the exact rights and privileges that members of the Rosebud Sioux Tribe enjoy in the four counties in question. The plaintiffs do ask this Court to declare whether or not any of the three statutes in question operated to diminish the geographical territory over which the tribe is entitled to exercise jurisdiction.

In recent years there have been many cases with substantially similar ques-

tions presented to the state and federal courts. *See, Seymour v. Superintendent*, 368 U.S. 351, 82 S.Ct. 424, 7 L.Ed.2d 346 (1962); *Mattz v. Arnett*, 412 U.S. 481, 93 S.Ct. 2245, 37 L.Ed.2d 92 (1973); *City of New Town, N. D. v. United States*, 454 F.2d 121 (8th Cir. 1972); *United States ex rel. Condon v. Erickson*, 478 F.2d 684 (8th Cir. 1973); *United States ex rel. Feather v. Erickson*, 489 F.2d 99 (8th Cir., filed Dec. 7, 1973); *State of South Dakota v. Molash*, 199 N.W.2d 591 (S.D.1972); *State of South Dakota v. Williamson*, 211 N.W.2d 182 (S.D.1973). It is conceded that a declaratory judgment is an appropriate remedy in this circumstance.

PRELIMINARY STATEMENT

In 1868 the United States and the Great Sioux Nation agreed upon the establishment of the Great Sioux Indian Reservation. This treaty was ratified by Congress on February 16, 1869, (15 Stat. 635), and proclaimed by President Andrew Johnson on February 24, 1869. This reservation, as formed by the 1868 Treaty, encompassed all the present state of South Dakota west of the eastern bank of the Missouri River, including the four counties in question. However, the Great Sioux Reservation, as originally established, was diminished by a series of acts. An Act of March 2, 1889, (25 Stat. 888) reduced the Sioux lands to about half their former extent and explicitly restored the remainder to the public domain. This is conceded by the Tribe. In that act, the Rosebud Sioux Reservation was established and

[1067] contained the counties of Mellette, Tripp, Todd and part of Gregory and Lyman. The statutory description of the Rosebud Reservation was as follows:

"Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel to a point due south from the mouth of Black Pipe Creek; thence due north to the mouth of Black Pipe Creek; thence down White River to a point intersecting the west line of Gregory County extended north; thence south on said extended west line of Gregory County to the intersection of the south line of Brule County extended west; thence due east on said south line of Brule County extended to the point of beginning in the Missouri River, including entirely within said reservation all islands, if any, in said river."

In *United States v. Celestine*, 215 U.S. 278, 30 S.Ct. 93, 95, 54 L.Ed. 195 (1909) the Supreme Court of the United States said:

"When Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress."

[1-6] The United States Eighth Circuit Court of Appeals has just recently set forth clear guidelines for district

courts in determining jurisdictional questions relating to Indian reservations. The Court said in *United States ex rel. Feather et al. v. Erickson, supra*, the following:

"We have these guidelines: (1) Intent to abrogate treaty rights is not lightly imputed to Congress. *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 413, [88 S.Ct. 1705, 20 L.Ed.2d 697] (1968); (2) Congress having once established a reservation, all tracts remain a part of that reservation until separated therefrom by Congress. *United States v. Celestine*, 215 U.S. 278, 285, [30 S.Ct. 93, 54 L.Ed. 195] (1909); *Seymour v. Superintendent*, 368 U.S. 351, 359, [82 S.Ct. 424, 7 L.Ed.2d 346] (1962). Indeed, Congressional intent to disestablish the reservation must be either expressed on the face of the Act or be clearly discernible from the 'surrounding circumstances and legislative history.' *Mattz v. Arnett*, 412 U.S. 481, 93 S.Ct. 2245, 2258, [37 L.Ed.2d 92] (1973); *United States ex rel. Condon v. Erickson*, 478 F.2d 684, 689 (CA8, 1973); (3) Opening an Indian reservation for settlement by homesteading is not necessarily inconsistent with its continued existence as a reservation. *Seymour, supra*. See also *Condon, supra*; *City of New Town, North Dakota v. United States*, 454 F.2d 121, 125 (CA8 1972); (4) The well-preserved general rule is that Indians are to be left free from state jurisdiction and control. *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 93 S.Ct. 1257, [36 L.Ed.2d -129]

(1973); *Condon, supra* at 689 of 478 F.2d and citations. Federal jurisdiction is preferred. *McClanahan, supra*. (489 F.2d at p. 101)

Certainly in construing treaties and statutes passed for the benefit of Indians and Indian tribes, courts must construe them liberally and wherever possible resolve any doubt in favor of the same. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 8 L.Ed. 483 (1832); *Carpenter v. Shaw*, 280 U.S. 363, 50 S.Ct. 121, 74 L.Ed. 478 (1930); *Choate v. Trapp*, 224 U.S. 665, 32 S.Ct. 565, 50 L.Ed. 941 (1912); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 39 S.Ct. 40, 63 L.Ed. 138 (1918).

In regard to the three acts in question, it becomes the duty of this Court to examine those acts in relation to the guidelines set forth above to determine whether or not the Congress of the United States, in passing those acts, intended to diminish and extinguish the portions of the reservation covered in those acts, or merely to open those portions of the reservation to homesteading, and to not affect the outer confines of the Rosebud Reservation thereby. The acts in question are as follows: April 23, 1904 (33 Stat. 254); March 2, 1907 (34 Stat. 1230); May 30, 1910 (36 Stat. 448). The issue has been extensively and excellently briefed by both sides. In addition, this very issue has been discussed at length in two law review articles. See, Comment, *New Town, et al: The Future of an Illusion*, 18 S.D.Law Rev. 85 (1973); Smith, *New Town, et*

[1068]

al: A Reply, 18 S.D.Law Rev. 327 (1973). This Court will consider the acts in the order of passage.

1904 ACT

(Gregory County)

The operative language of the 1904 Act reads as follows:

"Article I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows:"

The 1904 Act originated in 1901. When the Rosebud Reservation was created by Congressional Act in 1889, § 12 of that Act read as follows:

"Section 12—That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interest of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be

considered just and equitable between the United States and said tribe or Indians, which purchase shall not be complete until ratified by Congress:" Act of March 2, 1889, § 12 (25 Stat. 888).

Pursuant to Section 12, an agreement was reached with the Rosebud Sioux Tribe in 1901 to cede the surplus, unallotted portion of the Reservation lying in Gregory County to the United States. However, the 1901 agreement itself was never ratified by Congress. The portion of Gregory County opened to non-Indian settlers was not approved by Congress until 1904. It is the plaintiffs' contention that this delay marked a departure point—a point at which the whole tenor of congressional reservation policy changed. It appears that the plaintiff concedes that the 1901 agreement would have worked a diminution of the reservation. The plaintiff quotes the following House Report in support of this contention:

"Both of these bills present a new idea in acquiring Indian lands, and if this bill should be enacted into law it will establish a new policy and be a departure from the policy that has long since prevailed in acquiring Indian lands, as heretofore it has been the practice and policy of the Government to purchase lands from the Indians and pay them therefor and then open the same to entry and settlement This bill provides that the land shall be disposed of under the homestead laws by the settler paying therefor, and the proceeds paid to the

[1069]

Indians, and it is expressly provided by Section 6 of this bill that the United States shall in no manner be bound to purchase any portion of the land except the school sections, or dispose of the same except as provided, or to guarantee to find purchasers for said lands, it is expressly stated that the intention of the Act is that the United States shall act as trustee for the Indians in disposing of the lands and pay over the proceeds from the sale therefore only as the same are received." H.R. 10418, 58th Cong., 2nd Sess., January 21, 1904, p. 2.

The plaintiff states in its brief:

"thus, it is clear that, although the Gregory County act does employ some language to the effect that the United States was purchasing a tract of land outright for a consideration with the tribe retaining no interest, this was not the case. Congress actually had just abandoned this policy in favor of a policy whereby the United States acted merely as trustee for the sale of lands for the Indians, with the proceeds of the lands being paid to the tribe only if and when actually received from the homesteaders, instead of the United States paying the Indians a lump sum immediately and then trying to find buyers to recover the purchase price. As Burke stated, the Gregory County Act would establish a new policy, the refinements of which had yet to be made." Plaintiff's brief, (hereinafter cited as PB), at p. 30.

It is, however, the defendant's position that this "new policy" related solely and only to the method of payment and that the purpose and effect of the 1904 Act was the same as the 1889 Act in that regard. That is, that the opening of that portion of the reservation worked a diminution of the outer confines of the reservation and extinguished the same, making the reservation smaller than it originally was.

The Congressional Record is replete with speeches, debates, reports and discussions which tend to support the theory that the time lapse between 1901 and 1904 was because of a change in policy relating to the method of purchasing the lands, rather than the effect that the purchase would have. At 35 Cong.Rec. 3187-88 (1902) is the following statement:

"Mr. Platt . . . it is true that several years ago, I think—in opening Indian reservations, we paid large and extravagant prices for the land to the Indians, upon the theory that the Government was going to be reimbursed for its expenditures by the settlers paying for the land which they settled upon, a sufficient sum to reimburse the Government. That went on for years, and everybody supposed that that was acceptable to the settlers. Then the settlers began to agitate that the Government should remit to them the obligation which they had incurred to pay for the land, and thereby reimburse the Government, and the history of this agitation, of course, is well known. The Government remit-

ted about \$35,000,000 which it had paid to the Indians and which the settlers agreed to repay to the Government by the passage of that free homes bill."

At 35 Cong.Rec. 4801-02, Mr. Platt continues the discussion:

"Now this particular agreement comes here to be ratified on a payment to the Indians of about \$2.50 an acre for the surplus lands within their reservation which are under the agreement to be ceded to the United States and *become part of the public domain*. The Indians, in negotiating, said that was not a fair price for the land and they were worth a great deal more. But finally the negotiation was concluded. The agreement comes here. So far as the Senate considers it, it is an agreement to open a reservation—to pass ordinarily without any particular examination or any thought of the consequences to the government in the matter of expense. I will not go into history of the negotiations as to these lands, but the price paid or agreed to be paid to the Indians is \$2.50 an acre for the entire acreage *which is to be brought under the public domain by cession to the United States*.

The bill proposes that the land thus acquired shall be opened to homestead settlement without requiring any payment for the land settled upon from the settler. My amendment proposes that the settler pay \$2.50 an acre, being the same which the government has agreed to pay to the Indians, and

[1070]

that thus the government shall be reimbursed for the amount expended for the purchase. . . ." (Emphasis added)

And at 35 Cong.Rec. 4807, the following statement is seen:

"Mr. Clapp . . . here is this reservation in South Dakota. Of course the senators from South Dakota can speak more specifically of the character of the reservation and its surroundings than I can; but because we have to pay the Indians a certain amount for that reservation, as a matter of progressive Indian policy, *for the purpose of separating the Indians and extinguishing the reservation or for the purpose of meeting the advancing demands of civilization for the use of the lands*, it does not follow that the land is primarily and inherently worth so much an acre." (Emphasis added)

And finally, after the original bill was, in fact, amended this discussion takes place in the House of Representatives:

"Mr. Burke . . . Mr. Speaker, this bill provides for the opening to settlement of 416,000 acres of land, now a portion of the Rosebud Reservation in South Dakota, being that portion of the reservation in Gregory County. In 1901 a treaty was entered into with the Rosebud Indians on the part of the United States, by which the Indians agreed to sell to the government this land for \$2.50 per acre. That treaty was transmitted to Congress, *and because of the fact that it*

provided that the government should pay for the lands outright and then take the chance of the Treasury being reimbursed by disposition of lands to settlers, it never got further than through the Committee on Indian Affairs, which unanimously reported it favorably. It was never given consideration in the House.

Toward the concluding days of the last session of Congress, a new bill was prepared, substantially as this bill now provides, and that bill provided that the lands should be ceded by the Indians to the government, disposed of to settlers under the provisions of the Homestead Law, the price to be fixed at \$2.50 per acre, as was provided in the original treaty. That bill did not receive consideration in the last Congress because of lack of time, but during the summer that bill was submitted to this tribe of Indians for their acceptance and 48 more than a majority consented to accept the terms of that bill. This bill is substantially the same as the bill which I have just referred to, except that the Committee, in view of a suggestion made by the Commissioner of Indian Affairs, in which he said he has no objection to the passage of this bill, provided the Indians were insured of as much money as they would have received under the treaty, instead of fixing the price at \$2.75, which was provided in the bill submitted to the Indians during the summer, fixed the price at \$3.00 per acre for all the lands taken within the first six months, and \$2.50 for all lands taken thereafter.

It was thought by the Committee that this would certainly insure the Indians as much money as they would have received under the original treaty, and, in my judgment, it insures their receiving considerably more. There is no opposition to the passage of this measure so far as I know." 38 Cong.Rec. 1423 (1904). (Emphasis added)

It appears, then, that the 1904 Act, as finally passed, incorporates verbatim, the entire text of the 1901 agreement with the exception of the 1901 lump sum section (the 1901 appropriation provisions). It appears that the new policy was, in fact, merely a change in an appropriations matter and not a change in any substantive effect of the act in question. The extended discussions just quoted center on appropriations problems while assuming that the reservation would be extinguished and the land returned to the public domain. The Eighth Circuit Court of Appeals had occasion to consider the effect of this change in policy in *United States ex rel. Condon v. Erickson*, 478 F.2d 684 (8th Cir. 1973). In *Condon*, the Court said:

"Appellee thinks it significant that the 1908 Act provided for the proceeds from the sale of the lands to be deposited into the Treasury of the United States and credited to the Indians as was the case in the 1906 (*Seymour*) and 1910 (*New Town*) Acts. This method contrasts with prior acts wherein payment for the land was made directly to the Indians. It has been aptly pointed out, however, that this was simply a new

[1071]

method utilized by a Congress that no longer favored purchasing Indian lands and providing them free of cost to settlers." 478 F.2d 684, 687.

This Court, then, is satisfied that the 1901 agreement and the 1904 Act, concerning Gregory County, were considered by the Congress of the United States to be one and the same with the exception of the appropriation (homestead) provision. The true issue is, however, what was the intention of Congress with regard to the boundaries of the reservation in the 1904 Act.

What was the intention then of Congress in this opening of the portion of the Rosebud Reservation in Gregory County? It is now clearly established that the opening of an Indian reservation is not necessarily inconsistent with the reservation remaining geographically as large as it once was. *Seymour v. Superintendent*, *supra*; *Mattz v. Arnett*, *supra*. Again, legislative history is helpful in relation to these acts. *c. f.* *United States ex rel. Condon v. Erickson*, 478 F.2d 684, 688 (8th Cir. 1973); *See, Mattz v. Arnett*, 412 U.S. 481, 93 S.Ct. 2245, 2258, 37 L.Ed.2d 92 (1973).

Congressional Statements

There are many statements in the Congressional Record which tend to support the defendants' theory that the size of the Rosebud Reservation was, in fact, diminished by the 1904 Act. One quotation, in a committee report, is enlightening:

"There is no question but what the

Indians have no use for the land that is proposed to be ceded by this bill; that the tract is only a very small portion of the Rosebud Reservation, and is really only a corner of the reservation, which will be left compact and in a square tract, and a reservation about equal in size to the Pine Ridge Reservation in South Dakota." H.R. Rep.No.443, 58th Cong., 2nd Sess. (1904).

Clearly the report suggests that the size of the reservation will be changed. A quick glance at a map will show that Gregory County must be *removed* to provide a "square tract". A copy of a page containing such a map is appended herein as Appendix A. The map is originally found at Comment, New Town, et al.: *The Future of an Illusion*, 18 S.D.Law Rev. 85, 129 (1973).

In addition, the following discussion takes place at 35 Cong.Rec. 4807:

"Mr. Clapp . . . here is this reservation in South Dakota. Of course the senators from South Dakota can speak more specifically of the character of the reservation and its surroundings than I can; but because we have to pay the Indians a certain amount for that reservation, as a matter of progressive Indian policy, for the purpose of separating the Indians and *extinguishing* the reservation or for the purpose of meeting the advancing demands of civilization for the use of the lands, it does not follow that the land is primarily inherently worth so much an acre." (Emphasis added)

And again, in H.R.Rep.No.443, 58th Cong. 2nd Sess. at p. 4 (1904), the following quotation is made of testimony of the Commissioner of Indian Affairs in front of the House Committee on Indian Affairs:

[1072] "If you depend on the consent of the Indians as to the disposition of the lands where they have the fee to the land, you will have difficulty in getting it and I think the decision in the Lone Wolf case, that Congress can do as it sees fit with the property of the Indians will enable you to dispose of the land without the consent of the Indians. If you wait for their consent in these matters, it will be fifty years before you can do away with the reservations."

The law review article cited immediately above contains an extensive discussion of this matter.

It is difficult to read the House and Senate debates and reports without coming to the conclusion that the 1904 Act was an attempt to "do away" with the Rosebud Reservation in Gregory County. That purpose simply seems to be an assumption upon which all actions were taken and statements premised. Other materials similarly lead to that conclusion, however.

School Land Provision

Upon this state's admission to the Union, South Dakota's enabling act provided that:

"Nor shall any lands embraced in Indian, military or other reservations of

any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become part of, the public domain." Act of Feb. 22, 1889, § 10, 25 Stat. 676

The 1901 agreement did not contain a school lands provision. However, Senator Gamble from South Dakota proposed, and the Senate adopted a school lands provision in 1902. Senator Gamble explained to the Senate the reason for his amendment:

"Under the provisions of the enabling act authorizing the admission of the State of South Dakota into the Union, sections 16 and 36 in every township were reserved for school purposes. This provision did not apply to permanent Indian reservations, but became operative when the Indian title was extinguished and the land restored to and became a part of the public domain. This would withdraw about 29,000 acres of these lands and would leave 387,000 acres to be opened to settlement and which would be affected by the proposed amendment." 35 Cong.Rec. 3187 (1902).

Here is an unequivocal statement and corresponding action by the Senate of the United States premised solely and only upon the fact that the title of the Indians was extinguished and the lands restored to the public domain. It is a strong indication by Congress that its intention was to diminish the size of the Rosebud Reservation. The amendment was adopted without discussion, again

buttressing the impression that the diminution of the Rosebud Reservation was a premise upon which all members of Congress acted when enacting the various Indian acts.

And again, when the school lands provision was proposed in the House of Representatives and a Rep. Finley questioned the appropriation for those school lands, Congressman Burke, a member of the House Committee on Indian Affairs, and a South Dakotan, responded:

"I am glad that the gentleman has asked me that question. I would state that under the enabling act under which the State of South Dakota was admitted to the Union, it was provided that sections 16 and 36 in said state should be reserved for the use of the common schools of that state, and it further provided that as to the lands within an Indian reservation the portions of that grant would not become operative until the reservation was extinguished and the lands restored to the public domain. That enabling act was passed by Congress on the 22nd day of February, 1889. In March of that same year, Congress ratified a treaty with the Sioux Indians in South Dakota for the cession of something like ten or twelve million acres of land, and made an express appropriation, in accordance with that enabling act, to pay outright out of the Treasury the money for sections 16 and 36 of that land at the price stipulated for in the Treaty. Mr. Finley . . . Then as I understand the gentleman, he bases the wisdom or equity for this provision upon the ena-

[1073]

bling act admitting South Dakota into the Union. Mr. Burke, 'Yes', Mr. Finley, "and not otherwise?" Mr. Burke, 'no'." 38 Cong.Rec. 1423 (1904).

The plaintiff herein makes reference to a statute (43 U.S.C.A. § 865) which provides for the granting of school lands in opened reservations that are not restored to the public domain. This statute is not in point for it allows the state to *select* lands for school purposes *prior* to the opening of such reservation. However, the 1904 Act specifically referred to sections 16 and 36 in its granting of school lands and its legislative history indicates it was done in response to South Dakota's enabling act. This Court feels that 43 U.S.C.A. § 865, in fact, lends weight to the argument that the express grant of school lands in the 1904 Act bolsters its position. Had Congress merely been "opening" the reservation for settlement, it could have used 43 U.S.C.A. § 865 to supply the state of South Dakota with school lands. This method was not used, however.

The school lands provision stands as a clear indication of congressional intent to restore Gregory County to the public domain. *See, United States ex rel. Condon v. Erickson*, 478 F.2d 684, 686 (8th Cir. 1973). Other congressional enactments express the same intention, however.

Subsequent Enactments

In 1905 Congress passed an act to extend the time in which settlers could establish their residence in Gregory County under the homestead acts. As will be

seen in the following quotations, there is a clear expression from Congress therein that Gregory County had ceased to be considered in the "congressional mind" as reservation or "Indian land". In *Mattz v. Arnett*, 412 U.S. 481, 93 S.Ct. 2245, 2258, 37 L.Ed.2d 92 (1973), the Supreme Court discussed subsequent legislation to bolster its opinion that the reservation at issue therein had not been extinguished. In Senate Report No. 2760, 58th Cong., 3rd Sess., p. 1 (1905), the following appears:

"The Committee on Public Lands, to whom was referred the bill to provide for the extension of time within which homestead settlers may establish their residence upon certain lands which were *heretofore a part of the Rosebud Reservation*, within the limits of Gregory County, South Dakota, having had the same under consideration, beg leave to report the bill back with the recommendation that it be amended, and that as amended it do pass."
(Emphasis added)

Senator Gamble, in remarks before the Senate, found at 39 Cong.Rec. 1578 (1905), said the following:

"I ask unanimous consent for the present consideration of the bill to provide for the extension of time within which homestead settlers may establish their reservation upon certain lands which were *heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, South Dakota* . . ."
(Emphasis added)

The operative language of the Act of February 7, 1905, ch. 545, 33 Stat. 700 is as follows:

"An act to provide for the extension of time within which homestead settlers may establish their residence upon certain lands which were *heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County*. . . ." (Emphasis added)

Here then, is another clear indication that the Congress of the United States considered the reservation nature of Gregory County extinguished. Congress, in its act, had referred to this land as heretofore a part of the reservation.

Conclusion

[1074]

This Court is of the opinion that the contemporary history of the 1904 Act indicates a congressional intent to extinguish that portion of the reservation. The defendant's brief reveals several contemporary documents and sources that buttress this opinion. At no time can this Court find an express discussion of state versus federal jurisdiction over the lands in question. However, the whole tenor of the discussion in Congress convinces this Court that the purpose was to "do away" with the reservation in this area. This Court is convinced that the only interest that the Rosebud Sioux Tribe retained in the Gregory County lands was to be in the proceeds from the sale of those lands. There was never any question in anyone's mind but that the lands would be sold. At this time the demand for land for settlers was great.

The case of *Ash Sheep Co. v. United States*, 252 U.S. 159, 40 S.Ct. 241, 64 L. Ed. 507 (1920) is not in point. The act in question therein contains several provisions which the 1904 Act does not. *Ash Sheep* itself recognized that each treaty must be judged by itself.

That being the case, it is this Court's judgment that the confines of the Rosebud Sioux Reservation were diminished by the 1904 Act and the reservation or Indian land nature was extinguished therein, and Gregory County restored to the public domain.

1907 ACT

(Tripp and Lyman Counties)

On March 12, 1907 Congress passed an act concerning Tripp County and a portion of Lyman County. Each treaty or act must be analyzed separately to determine congressional intent. See, *United States v. Ash Sheep Company*, 252 U.S. 159, 40 S.Ct. 241, 64 L.Ed. 507 (1920); *Kills Plenty et al. v. United States*, 133 F.2d 292, 295 (8th Cir. 1943).

The operative language of the 1907 Act is as follows:

"Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, that the Secretary of the Interior be and is hereby, authorized and directed, as hereinafter provided, to sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of Range twen-

ty-five West of the sixth principal meridian, except such portions thereof as have been, or may hereafter be, allotted to Indians"

Again, this Court should examine the history of the 1907 Act to determine congressional intent.

Negotiations

In 1906 Inspector James McLaughlin conducted negotiations with the Rosebud Sioux Indians for the cession of their unallotted lands in Tripp and Lyman Counties. Inspector McLaughlin was the very person who conducted the negotiations for the 1901 agreement and the 1904 Act. It is interesting to note that the transcript of their discussion adds weight to this Court's conclusion that the 1904 Act diminished and extinguished the Rosebud Reservation. The following quotation is found on page 5 of the hearing transcript held at the Rosebud Agency in 1906:

"Inspector McLaughlin There is no railroad running over any portion of the Rosebud Reservation, none within the boundaries of your reservation. That railroad in Gregory County has not yet come across your reservation boundary, but should it come into your reservation, you would receive pay for its right of way. Any of the Indians who may live in Gregory County whose allotments have been crossed by that railroad, have, or will receive pay for the privilege of crossing their allotments. So you need not worry about that, my friends." Dec. 14, 1906, Rosebud Agency Hearing by

James McLaughlin, U. S. Indian Inspector, page 5.

It appears then that Inspector McLaughlin's assumption was that Gregory County was no longer a part of the Rosebud Sioux Reservation.

[1075]

The Indian people during the negotiations expressed concern for the need of their land. Statements made by various Indians again buttressed this Court's opinion that the 1904 Act, in fact, diminished the reservation. A prime example is the following quotation:

"High Pipe: My friends, our Gregory County payment lasts two years yet. We all know that. The best land we have is in the eastern part of our reservation, Tripp County. The Indian people want to get land for their children there. They are very anxious to get land for their children down there." *Rosebud Hearing*, 1906, *supra*, page 8.

So it can be seen that the Indian members at this time recognized Tripp County as the eastern portion of their reservation. Gregory County does, of course, lie east of Tripp County. See map appended to this opinion. It is difficult for one to read the transcript of the negotiations in 1906 without feeling that this was merely a continuation of the original negotiation in 1901 which culminated in the Gregory County act, the 1904 Act, discussed above. That plainly is the import of all the discussion held therein. Chief Picket Pin, after discussing the Great Father's need for land said: "My friend, you are going home this time without any land." *Rose-*

bud Hearing, 1906, *supra*, page 7. The 1907 Act was clearly a continuation of the policies followed in the past. Not only the transcript of the negotiations for the 1907 Act indicate this conclusion, but the congressional history as well.

Congressional History

There are many statements contained in the Congressional Record and various congressional reports which indicate an intent by Congress to diminish the confines of the Rosebud Reservation yet another time. As stated in H.R.Rep.No. 7613, 59th Cong., 2nd Sess. p. 1 (1907):

"The purpose of this bill is to authorize the opening and sale of that portion of the Rosebud Reservation in South Dakota known as Tripp County, and it affects all that portion of the reservation east of Range 25 of the 5th Principal Meridian south of the Big White River and embraces about one million acres.

In the second session of the 58th Congress a law was passed authorizing a sale of so much of this same reservation as was located in Gregory County, the tract affected being about one-half the area embraced in the tract affected by the pending bill and lying immediately adjoining and east of Tripp County."

The exact same statement may be found in S.Rep.No.6838, 59th Cong., 2nd Sess., p. 1 (1907). In addition, Congressman Burke stated on February 16, 1907, the following:

"Mr. Burke from South Dakota . . . Mr. Speaker, the bill has the unanimous report of the Committee on Indian Affairs, in which committee it was very carefully considered. The bill is substantially in accordance with an agreement which has just been made with the Indians, signed by 42 more than a majority of the male Indians over the age of 18 years. It is in line with recent bills that have been passed affecting the sale of Indian Reservations. . . . The Indians, as I have stated before, have agreed to the disposition of it under the terms of the bill. *They will have left, after this land is disposed of, a reservation that is substantially fifty miles square*, and there are only 5,000 Indians." 50 Cong.Rec. 3104 (1907). (Emphasis added)

It can be seen, upon examining a map, that the quotation "fifty miles square" referred to in the quote relates approximately to the size of the reservation minus Gregory, Tripp and Lyman Counties. Mellette and Todd County make up a generally square area, roughly fifty miles on a side. Again, one can see the continuous policy with relation to the Rosebud Indian Reservation in opening the reservation, diminishing the reservation, and extinguishing the reservation nature of the lands concerned.

School Lands

Again, in the 1907 Act, the act makes provision for school lands as did the 1904 Act. The congressional committee

reports state that the school land provision contained in the 1907 Act is for the same reason that the school land provisions were included in the 1904 Act already referred to and discussed above. The following report can be found at H. R.Rep.No.7613, 59th Cong., 2nd Sess., pp. 3-4 (1907), and S.Rep.No.6838, 59th Cong., 2nd Sess., p. 3, (1907):

"Section 6 of the bill reserves sections 16 and 36 in each township for the use of common schools, and grants the same to the State of South Dakota. And section 7 makes an appropriation to pay for the same at \$2.50 per acre. This is following the precedents which have heretofore been established in the opening of other reservations in South Dakota, and is based upon section 10 of the Act of Congress admitting South Dakota into the Union, approved February 22, 1889. Said section is as follows:

'Sec. 10. That upon admission of each of said states into the Union, sections 16 and 36 in every township of said proposed states, and where such sections, or any portion thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, or other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legisla-

ture may provide, with the approval of the Secretary of the Interior: provided that the 16th and 36th sections embraced in permanent reservations for national purposes shall not at any time be subject to grants nor indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or the indemnity provisions of this act until the reservation shall have been extinguished and such lands restored to and become a part of the public domain.' "

Here again in the 1907 Act we have both the House and Senate reports on the bill referring specifically to the extinction of the reservation and the restoration of those lands to the public domain. This is a clear indication of congressional intent.

Allotments

In the case of *Mattz v. Arnett*, 412 U.S. 481, 93 S.Ct. 2245, 37 L.Ed.2d 92 (1973) the Court discussed the allotment provisions of the treaties involved. The Court in *Mattz* said:

"The presence of allotment provisions in the 1892 Act cannot be interpreted to mean that the reservation was to be terminated. This is apparent from the very language of 18 U.S.C. § 1151, defining Indian country notwithstanding the issuance of any patent therein." 412 U.S. 481, 504, 93 S.Ct. 2245, 2257, 37 L.Ed.2d 92.

There are allotment provisions in the 1907 Act. In Section 2 the following was stated:

" . . . provided, that prior to said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation. . . . "

The clear import of that section is that the Indians in the portion soon to be opened, were allowed to relinquish that part of the reservation and remove to the diminished portion of the reservation. The 1910 Act, to be discussed hereinafter, made that alternative explicit. It is clear that after that portion of the reservation had been opened, the land would be disposed of under the general homestead and townsite provisions and laws and that there would be from that time after no further allotments made in this area. The allotment provisions provided for or discussed in *Mattz* are as follows:

"Provided, That any Indian now located upon said reservation may, at any time within one year from the passage of this act, apply to the Secretary of the Interior for an allotment . . . and the Secretary of the Interior may reserve from settlement, entry, or purchase any tract or tracts of land upon which any village or settlement of Indians is now located, and may set apart the same for the permanent use and occupation of said village or settlement of Indians" See, 412 U.S. 481, 495, 93 S.Ct. 2245, 2253, 37 L.Ed.2d 92.

[1077]

It is clear from that quotation that the act in question contemplated a continuing presence or at least the option to the Secretary of the Interior to declare a continuing presence of reservation in the area opened. No such provision is made in the 1907 Act herein. In fact, the import of the act contemplates no such continuing area that may be "set apart . . . for the permanent use and occupation . . ." of the Indian. The allotment section in the 1907 Act merely allows the Indians the option to keep the allotment that they then had or give up that allotment and remove to some other portion of the reservation prior to the proclamation of the Act. See, Sec. 2, Act of March 2, 1907. As can be seen from page 17 of the transcript of the hearing conducted by the Inspector McLaughlin with the Indians concerning the 1907 Act, the allotment provisions contained therein are to assure that all Indians within the Rosebud Reservation who had not before been allotted lands would receive such lands before such time as the settlers were allowed to homestead in the area. See Dec. 14, 1906, Rosebud Agency Hearing by James McLaughlin, U. S. Indian Inspector, p. 17. There is no provision in the 1907 Act for continuing allotment provisions.

Subsequent Enactments

And again, subsequent laws enacted by Congress refer to Tripp County as "formerly within the Rosebud Reservation." See, *Mattz v. Arnett*, 412 U.S. 481, 93 S.Ct. 2245, 2258, 37 L.Ed.2d 92

(1973). The Act of January 11, 1915, 38 Stat. 792, is such an act:

"An Act Providing for the purchase and disposal of certain lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in Tripp County, *formerly a part of the Rosebud Indian Reservation* in South Dakota.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all lands containing the minerals known as kaolin, kaolinite, fuller's earth, china clay and ball clay, in Tripp County *in what was formerly within the Rosebud Indian Reservation in South Dakota*, and has heretofore been opened to settlement and entry under Acts of Congress which did not authorize the disposal of such minerals. . . ." (Emphasis added)

Here then, is a subsequent act of Congress which specifically refers to Tripp County as having been separated from the Rosebud Reservation. It is a clear indication of the intent of Congress. Again, in the Act of August 17, 1911, Ch. 22, 37 Stat. 21, the language is as follows:

"Be it enacted . . . that any person who has heretofore made a homestead entry for land in what was formerly a part of the Rosebud Indian Reservation, in the State of South Dakota, authorized by Act approved March second, nineteen hundred and seven. . . ."

[1078]

The above must be taken as a clear indication of congressional intent with regard to the extinction of the reservation nature of the lands in Tripp County. Really no clearer indication could be asked for than acts of Congress which refer to the 1907 Act and to Tripp County as formerly within the confines of the Rosebud Reservation.

The defendants' brief contains numerous citations to other letters and reports of various government officials and agencies which constantly refer to the Tripp County section of the Rosebud Reservation as having been separated from the reservation, or having been formerly within the reservation. These contemporary documents must lend credence to the defendant's argument that it was, in fact, the intent of Congress to diminish the Rosebud Reservation once again by means of the 1907 Act. Again, the whole tenor of the contemporary documents seem to suggest to this Court that it was, in fact, the intent of Congress to diminish the Rosebud Reservation. The transcripts of the hearings held in 1906 and 1907 by Inspector McLaughlin constantly refer to the Gregory County Act and that taking in the same vein as the taking in 1907 by the Tripp County Act. There seems to have been no question to the participants in those conferences but that the land would no longer be considered reservation land. There is the reference in the hearing transcript to Tripp County being the eastern section of the reservation and that this eastern section would then be taken. The congressional debates once

again seem to simply assume and have as their underlying premise that the separation and opening of Tripp County would work a diminution of the reservation. This Court is of the opinion that the surrounding circumstances, the congressional history and the contemporary documents of the 1907 Act clearly indicate the intention of Congress to diminish the Rosebud Reservation and extinguish the reservation nature of those lands in Tripp and Lyman Counties.

1910 ACT

(Mellette County)

Again, in 1910 Congress turned its eye to the Rosebud Reservation. Again the pressures for land for settlers were great, not only from the South Dakotans, but from people from the east who wished to move west. The response to this pressure was yet another bill to open the Rosebud Reservation for homestead settlement. The operative language of the 1910 Act is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh,"

Again, this Court must examine the Congressional Record and other contemporary history of the passing of the

1910 Act to determine the intent of Congress with respect to that act.

Congressional Statements

In January of 1910, Senator Crawford, discussing the Rosebud Reservation, made the following statement in the Congress of the United States:

"Mr. Crawford . . . By treaties negotiated from time to time, and by laws enacted from time to time, the area of lands occupied by the Indians has gradually narrowed to smaller and smaller limits until now the lands owned by the Indians are comparatively small in quantity. They are not lands which in their possession bring any revenue whatever. They do not cultivate them. They neither fish nor game upon them. The policy of the government toward the Indians and toward these lands has changed in more recent years simply in this respect—that the land be sold and the proceeds be made into a trust fund, the principle forever held inviolate and the income from which is devoted to the Indians" 45 Cong. Rec. 1068 (1910).

[1079] By this statement one can see the indication that Congress considered the openings in the three acts discussed so far to be a continuous process of narrowing the range upon which the Indians would roam and "civilizing" that part of the western United States. The statement above stands mainly for the proposition that each of the acts must be viewed in light of the other.

In Senate Report No. 887, 60th Cong., 2nd Sess., pp. 1-2 (1909), the following

report is made to the Senate of the United States concerning what was to become the 1910 Act:

"The present area of the Rosebud Indian Reservation aggregates 1,800,000 acres. The land proposed to be opened to settlement under the provisions of this bill embrace an area of about 900,000 acres. . . . It was at first contemplated to submit this bill, through an Indian inspector, for the consideration of the Rosebud Indians, but the Inspector, who for a number of years has had that especial work in charge, is otherwise occupied and has been unable to take it up and it is felt by the Committee that the provisions of the bill are fair and just to the Indians in all respects, and it would delay the consideration of the matter unduly if the action were withheld for that purpose and the measure could not receive consideration during the present session of Congress.

"The reservation is yet large, and in the judgment of your Committee the surplus and unallotted lands are unnecessary for the use of the Indians It also provides that the Secretary of the Interior, in his discretion, may permit Indians who have an allotment *within the area proposed to be opened to relinquish such allotment and receive in lieu thereof allotments anywhere within the reservation proposed to be diminished.*" (Emphasis added).

And in a report in the House of Representatives, H.R.Rep.No.429, 61st Cong.,

2nd Sess. p. 2, (1910), the following statements are made:

"The Rosebud Indian Reservation when set aside as a separate reservation under the Sioux Act of 1889, contained something over 3,000,000 acres of land. In 1904 the unused and unallotted portion of the reservation in Gregory County, about 500,000 acres, was disposed of and the Indians received therefrom something more than \$1,500,000. In the 59th Congress a law was enacted authorizing the sale of the unused and unallotted lands in that portion of the reservation in Tripp County, comprising about 1,000,000 acres, under a bill substantially in the same form as the bill now under consideration, except that the price of the land was fixed in the law, whereas under this bill the price is to be fixed by appraisement. . . .

"The area comprised in the present bill is about 800,000 acres and the proceeds from the sale thereof, under the terms of the bill, will probably amount to \$3,000,000. *There will still be left a reservation containing 1,000,000 acres, and as the Indians have all been allotted, there is no occasion for continuing a reservation larger than it will be when Mellette County is disposed of.*" (Emphasis added).

Here, perhaps, is the strongest statement yet in a House of Representatives committee report concerning each of the acts in question, in this Court's opinion. The committee starts by saying that the reservation was once 3,000,000 acres of

land and finishes by saying that after the passage of the 1910 Act the reservation would contain only 1,000,000 acres. The report says that there is no need for a continuing of a reservation larger than the one that will result after the opening and disposal of the land in Mellette County. There can be little question from reading this House Report but that the House of Representatives contemplated a diminished reservation by not only the 1910 Act, but the acts passed in 1904 and 1907 as well. In addition, Mr. Burke from South Dakota made the following statement during the debates on the 1910 Act:

[1080]

"I might say, Mr. Speaker, that there are two propositions to be considered in disposing of the unallotted and unused lands on Indian reservations. One is at the earliest possible date, to get among the Indians, the white men and have those lands that are of no benefit to anyone that are lying idle, doing no good, opened up and developed into farms, and I believe that the placing through what were heretofore reservations, actual settlers, will have the effect of civilizing the Indians who will have allotments and also give value to those allotments which at present are of little value." 45 Cong. Rec. 5457 (1910)

School Lands

Again, the 1910 Act provides for school lands as did the 1904 and 1907 Acts. The Senate Report No. 887, 60th Cong., 2nd Sess., p. 2 (1909) provides:

"Section 16 and 36 of the lands in

each township are not to be disposed of, but are reserved for the use of the common schools of the state, and these lands are to be paid for by the government in conformity with the provisions of the act admitting the State of South Dakota into the Union."

H.R.Rep.No.429, 61st Cong., 2nd Sess., p. 2 (1910), states almost the identical language in its report to the House concerning the bill. This Court has discussed in the sections on the 1904 and 1907 Act what it feels the import of the school lands provision is. Certainly the enabling act which admitted South Dakota to the Union discussing the disestablishing of the reservation and its return to the public domain must be a strong indication of congressional intent in this regard.

Intoxicants

Section 10 of the 1910 Act prohibits the introduction of intoxicants into the lands concerned with in this act. There is no dispute but that at this time there were federal laws prohibiting the introduction of all forms of intoxicants into "Indian country". The plaintiff would attach to this provision the congressional intent to continue the lands in Mellette County as Indian lands. This Court thinks, on the contrary, that the limiting of the prohibition of intoxicants to 25 years, clearly indicates an intent of Congress that this was not to be considered henceforth Indian land. Evidently Congress felt that it must provide a special section to prohibit such intoxi-

cants for a period of time to protect the Indians who still had allotted lands in that area. If Mellette County continued to be "Indian land", why would Congress feel the need to enact a specific act continuing the liquor prohibition, but only continuing it for a period of years? An eminent scholar on Indian law has the answer to that question:

"In connection with the power to regulate commerce with the Indian tribes there exists also the authority granted by the Constitution to do all things necessary and proper by way of carrying out its provisions. Pursuant to this power and the power over the territory and other property belonging to the United States, the federal government has imposed liquor restrictions on land ceded to it by the Indians when these lands adjoined Indian country. The purpose of this measure was to prevent sale of liquor on the boundaries of the land retained by the Indians. Except for these extensions of the liquor laws into 'buffer' areas the states would have had the exclusive police power thereon. Such extensions have been repeatedly upheld by the Supreme Court." F. Cohen, *Handbook of Federal Indian Law*, (University of New Mexico Press), p. 353 (1942 ed).

An interesting and enlightening discussion concerning the liquor provisions is found at 45 Cong.Rec. 5463-64 (1910):

"Mr. Goebel. . . . I am opposed to attaching to the sale of any reservation, conditions such as are proposed in this bill. Mr. Gronna. . . .

[1081]

Does the gentleman believe it would be safer on a reservation where liquors are permitted to be sold? Would the gentleman not buy land on a reservation where protection is given by the government, even if such reservation is located in a prohibition state?

Mr. Goebel Oh, I do not know what I would do. At present I want to get the land without any conditions attached. *You must also bear in mind that when the lands are sold, there is no longer a reservation and the laws of the state apply.*

Mr. Butler. . . . If the land is sold it will be no longer an Indian reservation. It is where, as I understand, the Indian has always lived and where he is going to live, and I believe in keeping the sale of liquor out of his neighborhood, and for that purpose I propose in a kind and gentle way to suggest to gentlemen that if there is to be an attempt made to prevent a restraint being imposed upon this title, they had better have a quorum of the House present to insure the success of the attempt." (Emphasis added).

Clearly this discussion indicates that the participants did not feel that the lands to be ceded and opened were reservation but that the liquor prohibition should be continued and remain so that the Indians who had an allotment in Mellette County would not be exposed to or affected by or tempted by "demon rum". It is this Court's opinion that the Indian agency and Indian schools provided for in Section 1 of the 1910 Act also fit within

this rationale. Congress knew that various members of the Rosebud Sioux Tribe had taken allotments in the lands soon to be ceded, and these provisions attempted to continue to provide for those people in that area, although the land would no longer be considered as reservation.

Allotments

This Court has discussed, in relation to the allotment sections of the 1907 Act, the United States Supreme Court's recent opinion in the case of *Mattz v. Arnett*, 412 U.S. 481, 93 S.Ct. 2245, 37 L. Ed.2d 92 (1973). In the *Mattz* opinion the Supreme Court made reference to the continuing nature of the allotment provisions to buttress its opinion that the Congress of the United States had no intention to extinguish the reservation nature of the lands involved. The 1910 Act which we are concerned with herein, also has certain allotment provisions contained in it.

"Provided, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the *diminished reservation*:" (Emphasis added.)

This allotment section is addressed in Senate Report No. 887, 60th Cong., 2nd Sess., p. 2 (1909):

"It also provides that the Secretary of the Interior in his discretion, may permit Indians who have an allotment within the area proposed to be opened

to relinquish such allotments and receive in lieu thereof allotments anywhere within the reservation proposed to be diminished."

This whole concept seems to be contrary to the concept that Mellette County continued as reservation land. In fact, in this Court's opinion, this allotment section provides the strongest indication yet that the area in question was no longer to be considered "Indian land". Congress, in effect, offered to allow Indians to exchange and take their allotments in what would continue to be Indian land so that they might continue to benefit from all of the programs that the government had on the reservation. They need not retain their allotment in what was no longer to be considered a reservation. Clearly there is no other reasonable explanation for such a provision.

Subsequent Enactments

As with the other acts described herein, subsequent acts of Congress lend credence and buttress this Court's opinion as to the effect of the 1910 Act. The Act of March 3, 1919, 40 Stat. 1320, provided as follows:

"The Secretary of the Interior is hereby authorized to sell and convey to the White River Cemetery Company, for cemetery purposes, for a price not less than the appraised value thereof, a ten-acre tract within the former Rosebud Indian Reservation in Mellette County, South Dakota, described as the northeast quarter of

the southeast quarter of the northeast quarter of section thirty-four, township forty-two north, range twenty-nine west, sixth Principal Meridian, or such part thereof as may be required:"

Again, this is an indication that Congress regarded Mellette County as having been separated from the Rosebud Reservation and restored to the public domain. See, *Mattz v. Arnett*, 412 U.S. 481, 93 S.Ct. 2245, 2258, 37 L.Ed.2d 92 (1973).

Conclusion

Again, the defendant cited to this Court reports and letters from various government bodies, officials and interested people which tend to confirm this Court's opinion that Mellette County was intended to be severed from the reservation and returned to the public domain. The school lands section, the intoxicants section, the allotments section all lend credence to this Court's opinion. This Court feels that the clearest indication yet of the congressional intent to diminish the Rosebud Reservation is expressed in the 1910 Act and the congressional history surrounding that act. It is clear from the congressional history that Congress viewed the 1904, the 1907 and the 1910 Acts as one continuous program of reducing the size of the various Indian reservations in the State of South Dakota so that settlers from the east could come in and acquire the land they so hungered for and so that the Indian people of South Dakota would become "more civilized". There is no

doubt in this Court's mind, after having reviewed the contemporary documents from the passage of the 1910 Act, and the congressional history thereof, that the Congress of the United States had the intention of diminishing the Rosebud Reservation and restoring Mellette County to the public domain under the jurisdiction of the State of South Dakota thereby.

CONCLUSION

The plaintiff brought this declaratory judgment action seeking declarations that the acts of Congress discussed herein, did not diminish the Rosebud Sioux Reservation or alter its boundaries from those defined in the Act of March 2, 1889. This Court has felt compelled to investigate and examine the legislative history of the three acts in question in order to make a determination in this action. See, *Mattz v. Arnett*, *supra*; *Seymour v. Superintendent*, *supra*; and *United States ex rel. Feather v. Erickson*, *supra*. As the United States Supreme Court said in the *Mattz* case, "A congressional determination to terminate must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history." 412 U.S. 481, 505, 93 S.Ct. 2245, 2258, 37 L. Ed.2d 92. It is this Court's opinion after having examined all the contemporary legislative materials, various government reports and discussions that the whole context of the acts from 1904 through 1910 had but one purpose in mind. It is clear that the purpose of those acts was to open those reservations to non-Indian

settlers and to civilize those areas in what the Congressmen obviously regarded as an uncivilized portion of the United States. As each successive act was proposed in Congress various reports referred to a continuing diminished size of the Rosebud Reservation. Originally the reservation was said to comprise 3,000,000 acres, and later 1,800,000 acres, and finally to comprise a reservation roughly the size of 1,000,000 acres. The allotment sections, the school lands provisions, the many negotiations conducted by Inspector McLaughlin, the congressional reports and debates, and the subsequent congressional enactments for each act lead this Court to believe and be of the opinion that the surrounding legislative history and the circumstances *clearly* indicate a congressional intent to separate each of the counties concerned, to return those counties to the public domain, and to extinguish the reservation or "Indian land" nature of those counties thereafter.

[1083]

Certainly this is the treatment that has been accorded those counties from the time of the acts' passage on. There is no dispute but that the State of South Dakota has treated the counties of Mellette, Tripp, Gregory and what was at that time Lyman County, as portions of the state over which the State of South Dakota can exercise jurisdiction since the passage of those acts. In fact, the Eighth Circuit Court of Appeals has in the past assumed, but clearly without deciding, that Todd County was the Rosebud Reservation and that other acts had affected the territorial nature of the

reservation. In *Beardslee v. United States*, 387 F.2d 280, 285 (8th Cir. 1967), the Court said:

"All of Todd County is obviously within the original boundaries of the Rosebud Reservation. Only three acts of Congress have affected the territory of the reservation since its establishment in 1889 and none of these concern Todd County."

The Court then went on to cite the very three acts which this Court is concerned with herein. The above is cited not for the fact that the Eighth Circuit had decided the jurisdictional questions herein, but only for the fact that the jurisdictional boundaries were treated by common usage, to have been diminished by the three acts in question. This is distinguished from the situation in *Seymour*. See, *Seymour v. Superintendent*, 368 U.S. 351, 359, 82 S.Ct. 424, 7 L.Ed. 2d 346 (1962).

This Court feels that the following report by the Commissioner of Indian Affairs cited to this Court by the defendants and given in 1912 is very enlightening upon the whole subject discussed at length herein:

"Under various acts passed by Congress within recent years, certain lands ceded by the Indians to the United States are open to settlement and entry, and the government endeavors to dispose of them at their appraised value to the benefit of the Indians.

"Nearly all such acts contain a clause practically identical with the following:

'That nothing in this act shall in any manner bind the United States to purchase any portion of the lands herein described . . . or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided.'

"It has been the practice to consider such lands under the jurisdiction and supervision of the General Land Office from the passage of the act, and the Indians' title thereto extinguished. On this theory the public at large has come to consider said lands a part of the public domain, and the lands have therefore been used indiscriminately by various interests, principally for grazing purposes, without compensation to the Indians.

"By *departmental decision* of November 27, 1911, it was held in effect that the Indians' title to such land is not extinguished until the date of entry, settlement, or sale, and the Indians are entitled to their use, or to any revenue that may be derived from their use by others, pending date of settlement, sale or entry." Report of the Commissioner of Indian Affairs, p. 51 (1912). (Emphasis added).

The Commissioner did not question that the lands returned to the public domain but only when they did so.

[1084]

This Court has examined the issues involved here very closely. The decision herein affects a large portion of the State of South Dakota. The decision will have great political, social, cultural and economic effects. From the time these acts were passed, these counties have been treated as outside the Rosebud Sioux Reservation by the settlers, their descendents, the State of South Dakota and the federal courts.

There can be little doubt but that the members of Congress coveted Indian lands. This Court must determine the intent of Congress as it existed at the turn of the century. Time and again the Indians were given reservations, only to have the settlers' need for land mandate a redefining of the reservation boundaries. While this Court does not necessarily agree with the mores or the methods employed at that time, there is little doubt that the congressmen were engaged in the process with the "doing away" of the reservations. This Court's only function is to determine congressional intent, not to rewrite history.

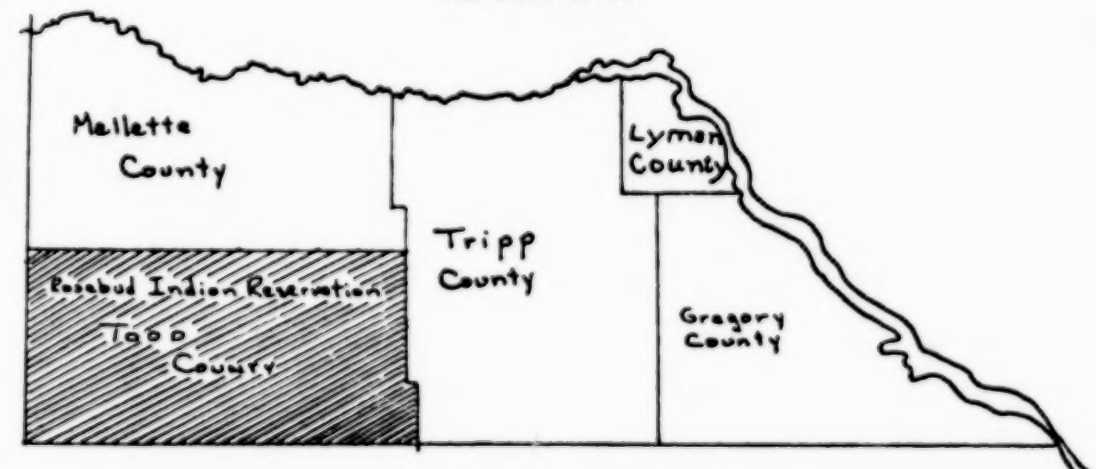
[7] This Court is aware of the many decisions that various courts have rendered regarding the jurisdictional boundaries of various Indian reservations. However, each congressional act and treaty is different and must be so examined. As the Eighth Circuit Court of Appeals said in *Kills Plenty, et al. v. United States*, 133 F.2d 292, 295 (8th Cir. 1943):

"It can, of course, be argued that the words 'within the limits of any Indian reservation' should mean the same thing in any statute, but the argument, we think, is unsound. . . . To find that meaning the words must be viewed in their setting, and the history and purpose of the Act must be considered."

The surrounding circumstances, the history, congressional and otherwise, and various documents, convince this Court that the three acts in question did diminish the Rosebud Sioux Reservation and that the State of South Dakota can exercise jurisdiction over Indian people in the counties of Gregory, Tripp, Mallette, and what was Lyman.

The defendants herein shall forthwith prepare the necessary papers to effectuate the opinion of this Court as expressed in this Memorandum Opinion.

APPENDIX



The unshaded portion of the map represents those areas of the original reservation opened to settlement by the homestead acts.

**Judgment Entered February 15, 1974 in the
United States District Court
for the District of South Dakota**

This matter was brought on before this Court on briefs and without a jury. The Rosebud Sioux Tribe brought this action for declaratory judgment pursuant to 28 U.S.C. sec. 2201-et seq, seeking declarations that three specific acts of Congress did not diminish the Rosebud Sioux Reservation or alter its boundaries from those defined in the act of March 2, 1889. The defendant, the State of South Dakota and the counties of Mellette, Lyman, Tripp and Gregory, asserted that the three acts did diminish the Rosebud Reservation so that the reservation presently embraces only Todd County, South Dakota.

The Court having studied and examined the briefs submitted by the respective parties, having researched this matter, and having made, entered and filed its Memorandum Opinion which shall also serve as Findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the three acts in question, the 1904 Act (Gregory County) 33 Stat. 254, the 1907 Act (whole of Tripp County and part of Lyman County) 34 Stat. 1230, the 1910 Act (Mellette County) 36 Stat. 448, did extinguish the reservation or "Indian land" nature of the unallotted surplus lands in said counties by returning them to the public domain, and did diminish the geographical location of the boundaries of the Rosebud Sioux Reservation to coincide with the boundaries of Todd County, South Dakota.

Dated this 15th day of February, 1974.

BY THE COURT:

Andrew W. Bogue

United States District Judge

APPENDIX C-1

[Act of April 23, 1904, c. 1484, 33 Stat. 254, 3 Kappler 71]

[71] CHAP. 1484.—An act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

Whereas James McLaughlin, United States Indian inspector, did, on the fourteenth day of September, anno Domini nineteen hundred and one, make and conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement made and entered into on the fourteenth day of September, nineteen hundred and one, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

ARTICLE I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating four hundred and sixteen thousand (416,000) acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

ARTICLE II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to expend for and pay to said Indians, in the manner hereinafter provided, the sum of one million and forty thousand (1,040,000) dollars.

[72] ARTICLE III. It is agreed that of the amount to be expended for and paid to said Indians, as stipulated in Article II of this agreement, the sum of two hundred and fifty thousand (250,000) dollars shall be expended in the purchase of stock cattle, of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls, for issue to said Indians, to be distributed as equally as

possible among men, women, and children as soon as practicable after the ratification of this agreement, and that the sum of seven hundred and ninety thousand (790,000) dollars shall be paid to said Indians per capita in cash in five annual installments of one hundred and fifty-eight thousand (158,000) dollars each, the first of which cash payments shall be made within four months after the ratification of this agreement.

ARTICLE IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

ARTICLE V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement.

ARTICLE VI. This agreement shall take effect and be in force when signed by U. S. Indian Inspector James McLaughlin and by three-fourths of the male adult Indians parties hereto, and when accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, U. S. Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, South Dakota, have hereto set their hands and seals at Rosebud Indian Agency, South Dakota, this fourteenth day of September, A. D. nineteen hundred and one.

JAMES McLAUGHLIN,
U. S. Indian Inspector.

No.	Name.	Mark.	Age.
1	He Dog.....	x	65
2	High Hawk.....	x	50
3	Black Bird.....	x	62
(and 1,028 more Indian signatures.)			

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Agency, South Dakota; that it was fully understood by them before signing, and that the foregoing signatures, though names are

similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

WILLIAM BORDEAUX, Official Interpreter.
WM. F. SCHMIDT, Special Interpreter.

ROSEBUD AGENCY, S. DAK., October 4, 1901.

[73] We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and the 1,031 Indians of the Rosebud Agency, S. Dak., to the foregoing agreement.

FRANK MULLEN, Agency Clerk.
C. H. BENNETT, Farmer, Cut Meat District.
JOHN SULLIVAN, Farmer, Black Pipe District.
FRANK ROBINSON, Farmer, Little White River District.
FRANK SYPAL, Farmer, Butte Creek District.
ISAAC BETTELYOUN, Farmer, Big White River District.
JAMES A. McCORKLE, Farmer, Ponca District.
LOUIS BORDEAUX, Ex-Farmer, Agency District.

ROSEBUD AGENCY, S. DAK., October 4, 1901.

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, S. Dak., is 1,359, of whom 1,031 have signed the foregoing agreement, being 12 more than three-fourths of the male adult Indians of the Rosebud Reservation, S. Dak.

CHAS. E. McCHESNEY,
United States Indian Agent.

ROSEBUD AGENCY, S. DAK., October 4, 1901.

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended and modified, as follows:

"ARTICLE I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one north; thence east along said township line to the point

of beginning, the unallotted land hereby ceded approximating four hundred and sixteen thousand acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

"ART. II. In consideration of the land ceded, relinquished, and conveyed by article one of this agreement, the United States stipulates and agrees to dispose of the same to settlers under the provisions of the homestead and town-site laws, except sections sixteen and thirty-six, or an equivalent of two sections in each township, and to pay to said Indians the proceeds derived from the sale of said lands; and also the United States stipulates and agrees to pay for sections sixteen and thirty-six, or an equivalent of two sections in each township, two dollars and fifty cents per acre.

[74] "ART. III. It is agreed that of the amount to be derived from the sale of said lands to be paid to said Indians, as stipulated in article two of this agreement, the sum of two hundred and fifty thousand dollars shall be expended in the purchase of stock cattle, of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children, but not more than one half of the money received in any one year shall be expended as aforesaid, and the other half shall be paid to said Indians per capita in cash, and an accounting, settlement, and payment shall be made in the month of October in each year until the lands are fully paid for and the funds distributed in accordance with this agreement: *Provided, however,* That not more than five hundred thousand dollars shall be expended or paid within two years after the ratification of this agreement, and not to exceed one hundred and fifty thousand dollars in each of the following years until the expiration of five years.

"ART. IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

"ART. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement."

SEC. 2. That the lands ceded to the United States under said agreement, excepting such tracts as may be reserved by the President, not exceeding three hundred and ninety-eight and sixty-seven one-hundredths acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions, shall be disposed

of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided,* That the rights of honorably discharged Union soldiers and sailors of the late Civil and the Spanish War or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged: *And provided further,* That the price of said lands entered as homesteads under the provisions of this act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, four dollars per acre, to be paid as follows: One dollar per acre when entry is made; seventy-five cents per acre within two years after entry; seventy-five cents per acre within three years after entry; seventy-five cents per acre within four years after entry, and seventy-five cents per acre within six months after the expiration of five years after entry. And upon all land entered or filed upon after the expiration of three months and within six months after the same shall be opened for settlement and entry, three dollars per acre, to be paid as follows: One dollar per acre when entry is made; fifty cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and twenty-five cents per acre within six months after the expiration of five years after entry: *Provided,* That in case any entryman fails to make such payment or any of them within the time stated all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and held for cancellation and the same shall be cancelled: *And provided,* That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry, as now provided by law, where the price of the land is one dollar and twenty-five cents per acre: *And provided further,* That all lands herein ceded and opened to settlement under this act, remaining undisposed of at the expiration of four years from the taking effect of this act, shall be sold and disposed of

[75]

for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one purchaser.¹

SEC. 3. That the proceeds received from the sale of said lands in conformity with this act shall be paid into the Treasury of the United States, and paid to the Rosebud Indians or expended on their account only as provided in article three of said agreement as herein amended.

SEC. 4. That sections sixteen and thirty-six of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, of the land in said county of Gregory are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

SEC. 5. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of seventy-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section four of this act.

SEC. 6. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein; or to guarantee to find purchasers for said lands, or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided.

Approved, April 23, 1904.

¹ 38 L. D., 213.

APPENDIX C-2

[Act of March 2, 1907, c. 2536, 34 Stat. 1230, 3 Kappler 307]

[307] CHAP. 2536.—An act to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range twenty-five west of the sixth principal meridian, except such portions thereof as have been, or may hereafter be, allotted to Indians: Provided, That sections sixteen and thirty-six of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose.

SEC. 2. That the land shall be disposed of by proclamation, under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: *Provided*, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot one hundred and sixty acres of land to each child of Indian parentage whose father or mother is or was, in case of death, a duly enrolled member of the Sioux Tribe of Indians belonging on the Rosebud Reservation who is living at the time of the passage and approval of this act and who has not heretofore received an allotment: ¹ *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late Civil and Spanish Wars or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged.²

SEC. 3. That the price of said lands entered as homesteads under the provisions of this act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, six dollars per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall have opened for settlement and entry, four dollars and fifty cents per acre; after the expiration of six months after the

same shall have been opened for settlement and entry the price shall be two dollars and fifty cents per acre. The price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the same price that it was first entered.³ *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law, where the price of the land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry shall be sold to the highest bidder for cash at not less than two dollars and fifty cents per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold after the said lands have been opened to entry for seven years may be sold to the highest bidder for cash, without regard to the above minimum limit of price.

SEC. 4. That the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe, in accordance with section twenty-three hundred and eighty-one of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided.

SEC. 5. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the Rosebud Reservation, in the State of South Dakota, the sum of one million dollars, which shall draw interest at three per centum per annum for ten years, the interest to be paid to the Indians per capita in cash annually, share and share alike; that at the expiration of ten years, after one million dollars shall have been deposited as aforesaid, the said sum shall be distributed and paid to said Indians per capita in cash; that the balance of the proceeds arising from the sale and dispo-

sition of the lands as aforesaid shall be deposited in the Treasury of the United States to the credit of said Indians and shall be expended for their benefit under the direction of the Secretary of the Interior, and he may, in his discretion, upon an application by a majority of said Indians, pay a portion of the same to the Indians in cash, per capita, share and share alike, if in his opinion such payments will be for the best interests of said Indians.

SEC. 6. That sections sixteen and thirty-six of the lands in each township within the tract described in section one of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the tract described herein, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

SEC. 7. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one hundred and sixty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section six of this act. *And there is hereby appropriated the further* [309] *sum of fifteen thousand dollars, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein: Provided*, That the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Rosebud Indians.

SEC. 8. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided: *Provided*, That nothing in this act shall be construed to deprive the said Indians of the Rosebud Reservation, in South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act.

Approved, March 2, 1907.

APPENDIX C-3

[Act of May 30, 1910, c. 260, 36 Stat. 443, 3 Kappler 459]

[459] CHAP. 260.—An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh Counties in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh, south of the White River, and being described and bounded as follows: Beginning at a point on the third guide meridian west where the township line between townships thirty-nine and forty intersects the same, thence north along said guide meridian to the middle of the channel of White River, thence west along the middle of the main channel of White River to the point of intersection with the line dividing the Rosebud and the Pine Ridge Indian Reservations, thence south along the boundary line between said reservations to the township line separating townships thirty-nine and forty, thence east along said township line to the place of beginning, except such portions thereof as have been or may be hereafter allotted to Indians or otherwise reserved, and except lands classified as timber lands: *Provided*, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation: *And provided further*, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: *And provided further*, That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other authority, of any religious organization heretofore engaged in mission or school work on said reservation for such lands thereon (not included in any town site hereinafter provided for) as have heretofore been set apart to such organization for mission or school purposes.

SEC. 2. That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: *Provided*, That prior to said proclamation the allotments within the portion of the said Rosebud Reservation to be

disposed of as prescribed herein shall have been completed: *Provided further*, That the rights of honorably discharged Union soldiers, and sailors of the late civil and Spanish wars or Philippine insurrection as defined and described in sections twenty-three hundred and [460] four and twenty-three hundred and five of the Revised Statutes as amended by the act of March first, nineteen hundred and one, shall not be abridged.

SEC. 3. That before any of the land is disposed of, as hereinafter provided, and before the State of South Dakota shall be permitted to select or locate any lands to which it may be entitled by reason of the loss of sections sixteen or thirty-six, or any portions thereof, by reason of allotments thereof to any Indian or Indians, the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe; and he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than ten acres in any town site, and patents shall be issued for the lands so set apart and reserved for school, park, and other public purposes to the municipality legally charged with the care and custody of lands donated for such purposes. The purchase price of all town lots sold in town sites, as hereinafter provided, shall be paid at such time and in such installments as the Secretary of the Interior may direct, and he shall cause not more than twenty per centum of the net proceeds arising from such sales to be set apart and expended under his direction in the construction of schoolhouses or other public buildings or in improvements within the town sites in which such lots are located. The net proceeds derived from the sale of such lots and lands within the town sites as aforesaid, less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements, shall be credited to the Indians, as hereinafter provided.

SEC. 4. That the price of said lands entered as homesteads under the provisions of this act shall be fixed by appraisalment, as herein provided. The President shall appoint a commission to consist of three persons to classify, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections sixteen and thirty-six or other lands which may be selected in lieu thereof by the State of South Dakota, in each of said townships, said commission to be constituted as follows: One resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians. That within twenty days after their appointment the said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect, classify, and appraise, in one hundred and sixty acre tracts each, all of the remaining unallotted lands embraced within that portion of the reservation described in section one of this act. In making such classification and appraisalment said lands shall be divided into the following classes: First

agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral and timber lands shall not be appraised: *Provided*, That timber lands may be classified without regard to acreage: *And provided further*, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians. That said commissioners shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection, classification and appraisal of said lands, and necessary expenses exclusive of subsistence to be approved by the Secretary of the Interior, such inspection, classification and appraisal to be completed within six months from the date of organization of said commission.

[461] SEC. 5. That said commission shall be governed by regulations prescribed by the Secretary of the Interior; and after the completion of the classification and appraisal of all of said lands the same shall be subject to the approval of the Secretary of the Interior.

SEC. 6. That the price of said lands disposed of under the homestead laws shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments, to be paid in two, three, four, five, and six years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be again subject to entry under the provisions of the homestead law at the appraised price thereof: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the appraised price, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this act.

SEC. 7. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums to which the said tribe may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization.

SEC. 8. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose, and in case any of said sections, or parts thereof, are lost to said State by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section one of this act, to locate other lands not otherwise appropriated, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement: *Provided*, That in any event not more than two sections shall be granted to the State in any one township, and lands must be selected in lieu of sections sixteen or thirty-six, or both, or any part thereof, within the township in which the loss occurs, except in any township where there may not be two sections of unallotted lands, in which event whatever is required to make two sections may be selected in any adjoining township.

[462] SEC. 9. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of not more than one hundred and twenty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section eight of this act. And there is hereby appropriated the further sum of thirty-five thousand dollars, or so much thereof as may be necessary, for the purpose of making the appraisal and classification provided for herein: *Provided*, That the latter appropriation, or any further appropriation hereafter made for the purpose of carrying out the provisions of this act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribe.

SEC. 10. That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, granted to the State of South Dakota, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

SEC. 11. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: *Provided*, That nothing in this act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act.

Approved, May 30, 1910.

APPENDIX D

Surplus Land Statutes Enacted 1904-1913

			Reservation Population*	Enroll- ment*
1. Red Lake, Minn.	2/20/04, c. 161, 33 Stat. 46	2,737	4,774	
2. Rosebud, S.D.	4/23/04, c. 1484, 33 Stat. 254	7,181	9,400	
3. Flathead, Mont.	4/23/04, c. 1495, 33 Stat. 302	2,825	5,296	
4. Devils Lake, N.D.	4/27/04, c. 1620, 33 Stat. 319	1,748	1,629	
5. Crow, Mont.	4/27/04, c. 1624, 33 Stat. 352	3,842	4,828	
6. Grande Ronde, Ore.	4/28/04, c. 1820, 33 Stat. 567	**	**	
7. Yakima, Wash.	12/21/04, c. 22, 33 Stat. 595	7,010	5,391	
8. Wind River, Wyo.	3/3/05, c. 1452, 35 Stat. 458	4,062	4,594	
9. Colville, Wash.	3/22/06, c. 1126, 34 Stat. 80	2,949	4,953	
(Held not to terminate reservation status in <i>Seymour v. Superintendent</i> , 368 U.S. 351 (1962))				
10. Lower Brule, S.D.	4/21/06, c. 1645, 34 Stat. 124	581	296	
11. Coeur D'Alene, Idaho	6/21/06, c. 3504, 34 Stat. 334	523	523	
12. Blackfeet, Mont.	3/1/07, c. 2285, 34 Stat. 1035	6,220	10,467	
13. Rosebud, S.D.	3/2/07, c. 2536, 34 Stat. 1230	—	—	
14. Spokane, Wash.	5/29/08, c. 217, 35 Stat. 458	600	1,500	
15. Cheyenne R., S.D.	5/29/08, c. 218, 35 Stat. 460	4,236	5,993	
(Held not to terminate reservation status in <i>United States ex. rel. Condon v. Erickson</i> , 478 F.2d 684 (C.A. 8, 1973))				
16. St. Rock, N.D., S.D.	5/29/08, c. 218, 35 Stat. 460	4,712	7,131	
17. Fort Peck, Mont.	5/30/08, c. 237, 35 Stat. 558	6,000	5,674	
18. Pine Ridge, S.D.	5/27/10, c. 257, 36 Stat. 440	11,151	13,813	
19. Rosebud, S.D.	5/30/10, c. 260, 36 Stat. 448	—	—	
20. Ft. Berthold, N.D.	6/1/10, c. 264, 36 Stat. 455	2,677	3,709	
(Held not to terminate reservation status in <i>City of New Town v. United States</i> , 454 F.2d 121 (C.A. 8, 1972))				
21. St. Rock, N.D., S.D.	2/14/13, c. 54, 37 Stat. 675	—	—	
(Held not to terminate reservation status in <i>State v. Molash</i> , 86 S.D. 558, 199 N.W.2d 591 (1972))				

TOTALS: 69,054 89,971

* *Federal and State Indian Reservations*, pp. 131, 180, 189, 191, 193, 197-198, 316, 317-318, 330, 335, 337, 339, 343, 359, 387, 393-394, 415-416.

** Terminated. Act of August 13, 1954, c. 733, sec. 2, 68 Stat. 724 (25 U.S.C. 691 *et seq.*)

APPENDIX E**Excerpts From Materials Relating to the
History of the Rosebud Surplus Land Acts**

1. **Excerpts From Council Proceedings Conducted by
Inspector McLaughlin at Rosebud, South Dakota,
July 24, 25, 29, 30, and August 7, 8, 10 1903,
N.A. Record Group No. 48, Records of the Office
of the Secretary of the Interior, Indian Division**

[Aug. 8, 1903, p. 389]—Hollow Horn Bear:
We are Indians yet, and we remember the laws
that have been made for us. The Great Father
has made a law that there must be three-
fourths of the people consenting before any
action shall be taken by Congress. If they will
consider that law, they should not open that
Gregory County without our consent. If they
do, I shall feel like a prisoner in my own
country.

2. **Excerpts From Report Dated August 31, 1903,
Inspector McLaughlin to Secretary of the Interior,
pp. 2-3, N.A. Record Group No. 48, Records of
the Office of the Secretary of the Interior, Indian
Division**

[2] On August 8th I submitted the agreement,
herewith transmitted, [3] and invited those assenting to
come forward and sign it; and notwithstanding that the
council was dominated by the more active opponents of
the proposition, 90 signatures were at once obtained,
leaving only about 35 of those present who refused to
concur.

This large percentage of the assemblage assenting to the provisions of the new agreement, together with the message delivered me by the lieutenant of police from persons favoring the agreement who had returned to their homes, encouraged me sufficiently to make a tour of the several districts of the Reservation, and meet the Indians of the different settlements at the headquarters of their respective districts. I travelled by team about 400 miles over the Reservation, 100 miles through the districts west of the Agency and about 300 miles in the districts east of the Agency, visiting them in the following order:—Spring Creek, Upper Cut Meat, Cut Meat Issue Station, Black Pipe, Little White River, Butte Creek, Big White River, Bull Creek and Ponca Creek,—thus consuming sixteen days, during which time I explained every feature of the agreement at the nine different points above stated, at each of which district headquarters I received quite a number of signatures, a total of 737, which number, whilst being 48 more than half of the male adult Indians of the Reservation, is 296 less than the required three-fourths majority.

Excerpt From Instructions Dated December 5, 1906, Commissioner of Indian Affairs to Inspector McLaughlin, N.A. Group No. 75, Bureau of Indian Affairs, Land Division, Letter Book 917

3. [1] Sir: The Office is in receipt of a letter of November 26, 1906, from the First Assistant Secretary of the Interior, referring to Office communications of June 4 and November 23, 1906, concerning the recommendation of Senator Gamble that an inspector be detailed to enter into negotiations with the Rosebud Indians for the cession of the surplus unallotted land in Tripp County, South Dakota, and say that you are now at liberty to take up this work.

* * * * *

The lands referred to are embraced in townships
[Here follows the land description]

[2] * * * The Annual Report of this Office for 1905 shows the unallotted lands of the reservation to be 1,616,407 acres. The lands above described embrace according to approximate estimate 1,094,000 acres, of which there has been allotted about 187,000 acres, leaving a surplus of some 907,000 acres.

* * * * *

4. [10] It is but right to the Indians also that you should explain to them with great particularity that the law as defined by the Supreme Court of the United States, our highest and final tribunal, vests in Congress the right to open their lands without their consent; that the desire of the Department in sending you to talk the matter over with the Indians is to obtain from them their views of the terms on which the opening ought to be made; and that it will doubtless be to their advantage to enter into an agreement containing such reasonable provisions as they think would be most beneficial to them as a tribe.

Excerpt From Council Proceedings Conducted by Inspector McLaughlin at Rosebud, South Dakota, December 14, 15, 18, 20, 1906 and January 17, 18, 21, 1907, N.A. Record Group 75, Letters Received 1881-1907, 17495-Land-1907 (The full text is set out in App. III, pp. 176-269 in the court below)

5. [Sat., Dec. 15, 1906, p. 13] RALPH EAGLE FEATHER: You came to ask the whole people some questions. What the people want they have put in writing.

A very little question I want to put to you here. At the time you came here and made a treaty for our Gregory County lands, you mentioned five years' payments to us at the time. You said that every person would get \$30.50 annually. Now, my friend, we respect you a good deal because you belong to the tribe, married into our nation, that is the reason we respect you a good deal. You know that. What we wanted and what you wanted we accomplished in full at the time, but you have not fulfilled your promises. You know that, we know it. We did not get any \$30.50 per head yearly from that treaty. * * *

6. [Dec. 15, 1906, p. 15, McLaughlin] I can positively promise you that, in case we reach an agreement, it will provide for the allotment of lands to all children born since March 3, 1899, and they may be allotted in Tripp County and before the lands are opened.

* * * *

[p. 17] You ask that those entitled to allotments, but have not yet taken them, be allotted, of which there are about 80 in all. In answer to that I will say there will be no difficulty in that. All beneficiaries of the reservation who have not yet received allotments can be allotted before Tripp County is opened to settlement, and they can take them anywhere on the reservation, including Tripp County. There will be a provision in the agreement to that effect.

7. [Dec. 15, 1906, p. 23] RALPH EAGLE FEATHER: My friend, this is our wishes to have \$5 per acre and we put that in writing. * * * Here is the treaty we made with you in 1901 which you have stepped over and now you want more land again, the land we depend on in the

future. We want to get full pay for the land we sold you and something to eat from it. We are saving that Tripp County land for ourselves. The terms made in that Gregory County Agreement have not been fulfilled and have been changed. Somebody has held it back. * * *

8. [Dec. 15, 1906, p. 25] STRANGER HORSE: Now we have judged and put all we want in writing and given it to you.

9. [Wed., Dec. 16, 1906, p. 28] RED BULL: I want to say a few words before Hollow horn Bear makes his speech. Some of us have given Hollow horn power to speak for us and we have the names on this paper for whom he will speak.

10. HOLLOW HORN BEAR: * * * Before I arrived, my friends here wrote something on paper and presented it to you. The people over 18 years of age who live with me have given me the power to speak for them. If they had not given me that power, I would not be occupying the floor and making this talk. * * * [29] The Great Father wants us to make an agreement. I want \$5 per acre for the entire tract and I want the Great Father to pay for it. I want the Great Father's council to pay for this land at \$5 per acre straight, to guarantee it. * * * I want the money to be placed in the U.S. Treasury the same as former treaties were made. I want to say one thing more. In the Gregory County land that we sold, we missed one issue of cows and lost a calf from each cow by it. In the second year we lost the increase of the calf

again. We want the Great Father to pay for those calves which we lost. The value of the calves is \$5 per head. I want to say that if this is to become a law, we want our children who have no land to first have allotments.

11. [Dec. 18, 1906, p. 35] INSPECTOR McLAUGHLIN. * * *. You have an opportunity to be a party to an agreement for the opening of your Tripp County unallotted lands, and having explained it repeatedly, you must all know that the right is vested in Congress to open Indian lands without the consent of the Indians. * * *.

12. [December 18, 1906, pp. 41-42] INSPECTOR McLAUGHLIN: In reply to my friend Stranger Horse, I will say that I wish to have you fully understand without any mistake about it, that the allotment of the children, as also allotments to those who have not yet received allotments and to persons whose present allotments are to be relinquished and other allotments made to them instead, will be provided for in any agreement that we may enter into and that before Tripp County is opened. That will be distinctly understood, and the privilege of taking their allotments within the boundaries of Tripp County will be provided for in the agreement.

13. [Jan. 17, 1907, p. 2] INSPECTOR McLAUGHLIN. * * *. He was very pleased and commended the judgment of you people very highly in your desire to provide for an interest bearing fund of one million dollars and said that while 5% interest was a very high rate of interest on such a deposit, more than has been allowed on similar deposits for some time past, he would do

everything he could toward having it accepted, and Congressman Burke, who is the author of the House Bill for opening Tripp County, and a member of the committee on Indian Affairs, also said that he would do everything in his power to meet your wishes in this respect. The allotments for all of your children who have been born since allotments were completed will be provided for as you already understand, and will be made a part of any agreement that we may conclude, and Indians who have undesirable allotments will be permitted to relinquish them and take other allotments in lieu thereof on any unoccupied lands of the reservation including Tripp County.

* * * * *

14. [p. 5] As I stated to you before that both the Commissioner and Mr. Burke, who are determined to do the very best they can in protecting your interests, feel that the \$2.50 per acre for your school lands is all that can be reasonably demanded, and that it would be futile to urge for a higher price. There is now very little difference between us. I am ready to incorporate the depositing a million dollars at 5% interest and the petitioning to the Department through your Agent as to what disposition in the way of purchases you may wish to make from the remaining proceeds as received. As to reallocotting those who have poor allotments and to children who have no allotments, that will be made a part of the agreement.

15. [Jan. 18, 1907, p. 13] INSPECTOR McLAUGHLIN: The acreage of Tripp County is a little over a million acres, 1,094,000 acres, about 138,000 acres of

which has been allotted, leaving about 907,000 acres unallotted as it now stands. When the children, and those who desire to change their [14] allotments are allotted, should they select lands in Tripp County, it will reduce the acreage greatly. A specific number of acres will not be stipulated in the agreement, simply all lands that are left after the allotments are made, are to be disposed of, as provided in the Bill.

HOLLOW HORN BEAR: I tried to see the agent this morning and ask him how many people are entitled to allotments, but he was so busy I could not do so.

AGENT KELLEY: I think there is probably six or seven hundred.

16. [Jan. 18, 1907, p. 15] HOLLOW HORN BEAR: You also said that you were afraid that the Burke Bill would become a law if we did not consent to it.

INSPECTOR McLAUGHLIN: I did.

17. [Jan. 18, 1907, p. 36] INSPECTOR McLAUGHLIN. * * *. We might just as well try to swim up your Rosebud Creek in the spring when deep snows in the hills are melting, and when the water rushes down like a torrent and carries everything before it, as to try to keep back settlement of unoccupied lands. Do not think, my friends, that I am speaking in a way threatening you or trying to force you, as such is far from my intentions. I regard it my duty as a friend of the Indian and as a representative of the Government, to tell you the facts just as I know them, believing that your Tripp County lands will be opened to settlement whether you consent to it or not, and I would wish you to be a party to the

transaction by you people consenting to the reasonable proposition which I have presented.

18. [Jan. 18, 1907, p. 37] TODD SMITH. * * * My friend, this is the last thing I want to say to you. You have made a coward out of the people on the Rosebud Reservation, and the reason why I say that is this. You say to us if we do not do this it is going to be made a law anyhow.

19. Letter dated February 12, 1907, Inspector McLaughlin to Secretary of the Interior, N.A. Record Group 75, Bureau of Indian Affairs, Letters Received 1881-1907, 17945-Land-1907

Sir:

* * * * *

After a full discussion of the different propositions, I prepared the agreement embracing the provisions as agreed upon, which, after being read and explained to the Indians assembled, was accepted and the agreement was immediately signed by 43 Indians of those present. Then, in order to obtain the required number of signatures and make it unnecessary for the Indians to travel long distances from their homes to the Agency for that purpose in the cold weather, I visited the headquarters of the several districts of the reservation where the Indians of the respective districts met me, thus visiting Spring Creek, Cut Meat, Butte Creek, Bad Nation, Big White River, Bull Creek, and Ponca Creek stations, at which points I explained the provisions of the agreement to the Indians assembled and received the signatures of all concurring in the agreement.

20. Letter Dated April 2, 1909 From the First Assistant Secretary of the Interior to Inspector McLaughlin, N.A. Record Group 75, Bureau of Indian Affairs, Central File 1907-39, File 24400-09-3081, Pine Ridge

Sir:

You are hereby directed to take up with the Indians of the Pine Ridge and Rosebud Reservations the matter of opening parts of these reservations to settlement and entry, bills for which were pending before the last Congress.

There are enclosed herewith, for your information and use in connection with this matter, copies of the bills together with printed reports thereon, which embody the recommendations made by this Department when the bills were submitted here for report and recommendation.

Submit a separate report covering the provisions of each of the two bills, together with such recommendations as you care to make.

Excerpts From Proceedings of Councils Held By Inspector McLaughlin with Indians of the Rosebud Reservation

21. [April 21, 1909, p. 2] INSPECTOR McLAUGHLIN: * * * I am here again under orders of the Secretary of the Interior to present to you the question of opening to settlement the surplus lands of a certain part of your reservation as contemplated by a bill introduced by Senator Gamble on December 9th last, and you have been assembled here in council today that I may explain to you this pending legislation.

* * * * *

22. [p. 3] Several of your people, who were in attendance at that conference, expressed themselves as opposed to the opening of any more of your reservation and stated that a delegation of your people had but recently returned from Washington where they had met the Indian Commissioner and Senator Gamble to whom they had protested against the opening of any more of your lands.

* * * * *

[p. 3] My friends, this is the fifth time that I have negotiated with you for lands, and have been here so often with reference to the cession of lands, that my friend, High Pipe, has given me the name of "The man who bothers his friends for more land."

* * * * *

23. [p. 4] I have now explained the provisions of the bill so clearly that all present should understand it, and when considering the proposition you should not forget that the law, as defined by the Supreme Court, vests in Congress the power to open the surplus lands of Indian reservations without the consent of the Indians, and you are all aware of this power of Congress, it having been fully explained to you in previous negotiations of these past few years.

* * * * *

24. [April 26, 1909, p. 15] INSPECTOR McLAUGHLIN: * * * I am not here to ask you to touch the pen or make any agreement at this time. This requirement has been discontinued since the Supreme Court defined the law that Congress had the power to open any Indian reservation without the Indians' consent. * * *.

25. [p. 18] TURNING BEAR: My friend, this is the fourth time that we see you. Look at me. I am one of your treaty men. I have honored the Great Father and I am one that has always worked for the Great Father. Whenever there has been trouble and it was smoky, the agent sends me to get the people that are making trouble and I get them. I have helped the Great Father in every way that I could. But now I do not think that this law that he is going to make is good. He wants to take our land without making a treaty with us. This is what I do not believe in. We want you to go back to the Great Father and tell him that this land is ours and if we do not get what we want we will not touch the pen or make the treaty.

26. Excerpt from General Accounting Office Report, Vol. 3, p. 1653, filed July 12, 1934, in *Sioux Tribe v. United States*, No. C-531 in the Court of Claims

An examination of the township plats of survey and tract books on file in the General Land Office discloses that the area of the lands within the boundaries defined by Section 1 of the aforesaid act of March 2, 1907, was 1,083,680.11 acres (see Exhibit A, tracts Nos. 5, 17, 27, 33, and 165; also, Sectionized map of Rosebud Indian lands opened by the act of March 2, 1907, General Land Office files), the status of which, as of June 30, 1925, was as follows:

	<u>Acres</u>
Total area affected by the act of March 2, 1907	<u>1,083,680.11</u>
Indian allotments (Sections 1 and 2 of said act)	406,081.75
Disposed of to entrymen	573,797.87

Disposed of by public sale		37,516.38
State school lands:		
Sections 16 and 36 of each township (Sec- tion 6 of said act)	53,130.80	
Indemnity selections (Section 6 of said act)	11,455.17	64,585.97
Reserves:		
Missionary	205.00	
Agency	412.44	(a) 617.44
Town sites: (Section 4 of said act)		
Wamblee	160.00	
Wewela	160.00	
Minneota	320.00	
Witten	320.00	960.00
Vacant (subject to entry), as of June 30, 1925		<u>120.70</u>
		<u>1,083,680.11</u>

27. Excerpt from General Accounting Office Report, Vol. 3, pp. 1707-1708, filed July 12, 1934, in *Sioux Tribe v. United States*, No. C-531 in the Court of Claims

[1707] An examination of the township plats of survey and tract books on file in the General Land Office discloses that the lands described in Section 1 of the aforesaid act of May 30, 1910, are embraced within the present boundaries of Mellette County, South Dakota (see Session Laws, South Dakota, 1911, page 138; also Exhibit A, Tract No. 28; also map of Rosebud Reservation, South Dakota, showing lands to be opened to settlement under the President's proclamation of June

29, 1911), and embrace a total area of 837,125.78 acres, the status of which, as of June 30, 1925, was as follows:

	<u>Acres</u>
Total area affected by the act of May 30, 1910	<u>837,125.78</u>
Indian allotments (Sec. 1 of said act)	514,509.53
State School lands: Sections 16 and 36 of each township (Sec. 8 of said act)	19,114.04
Indemnity selections (Sec. 8 of said act)	<u>30,565.99</u>
	49,680.03
[1708] Disposed of to entrymen	265,770.56
Reserves: (Sec. 1 of said act)	
Missionary	1,370.48
Cemetery sites	10.00
Day school	886.64
Agency (issue stations)	<u>1,099.29</u>
	(a) 3,366.41
Vacant (subject to entry), as of June 30, 1925	<u>3,799.25</u>
	<u>837,125.78</u>

28. Pertinent Excerpt From Slip Opinion Filed August 1, 1975 in State of South Dakota v. Whitehorse, No. 11319-a-JMD in the Supreme Court of South Dakota

[p. 6] In State v. Molash, 86 S.D. 558, 199 N.W.2d 591, we found that the Standing Rock Reservation was not disestablished by the Act of 1913 (37 Stat. 675). This Act is strikingly similar to the Act of 1907 herein involved in this case. Both Acts use the language "to sell or dispose of all that portion of (naming the reservation)" and go on to describe a contiguous tract of land on those reservations. Both Acts provide for the land to be sold and the money derived therefrom to be held in trust for the Indians, and for the allotment of lands to each Indian who has not been allotted before the sale was made. It should be noted that at the time this court decided State v. Molash, *supra*, we did not have the benefit of the comprehensive citations leading to an analysis of the "legislative history" and "surrounding circumstances" from which the intent of Congress could be established when it passed the Act dealing with the Standing Rock Reservation. Thus the case was decided on the wording of the 1913 treaty as interpreted in Seymour v. Superintendent, 368 U.S. 351, 82 S.Ct. 424, 7 L.Ed.2d 346, and The City of New Town, North Dakota v. [p. 7] United States, 8 Cir., 454 F.2d 121. Rosebud Sioux Tribe v. Kneip, *supra*, disposed of the Seymour and New Town cases in the following language:

"Cases where the congressional intent 'was that the reservation should continue to exist as such,' Seymour, *supra* p. 355, or New Town, *supra*, where the court was unable to find a congressional intent to disestablish are not, of course, inconsistent with the result we have reached. For (as will be fully developed herein), the defendants before us have

demonstrated that a congressional determination to terminate lay behind each of the Acts in question."

We also suggested in *State v. Molash*, *supra*, that certiorari be requested to determine the question therein presented.

Whether *State v. Molash*, *supra*, can withstand the scrutiny of the intent expressed by Congress at that time or the circumstances surrounding the enactment of the Act of 1913 remains for future decisions.

APPENDIX F

Comparison of the 1901 Agreement and the 1904 Act

The court of appeals thought that the 1904 Act "amended the 1901 Agreement solely with respect to the method of payment." (App. A, p. 23.) The facts are to the contrary.

First, under Article I of the 1901 Agreement (App. C-1, p. 115), the Indians sold. The sale was not ratified so that it never took place. The court below disregarded this.

Second, under Article II of the 1901 Agreement (App. C-1, p. 115), the United States bought the land and agreed to pay \$1,040,000 for it. As amended by the 1904 Act, the United States did not buy and did not agree to pay anything. If none of the land had been sold, the Indians would have received nothing. The last section of the 1904 Act spelled out that the United States had no obligation to buy, or to find buyers for, the land. This was not a change in "method of payment." This was a repudiation of any notion that the United States might pay. Yet, the entire concept of the court of appeals rests on this erroneous premise.

Third, under Article III of the 1901 Agreement (App. C-1, p. 115-116), the United States agreed that out of the purchase price of \$1,040,000, \$250,000 was to be expended for cattle to be distributed as soon as practicable after ratification, and the balance of \$790,000 was to be paid per capita in five annual installments of \$158,000 each, the first within four months after ratification.

As amended by the 1904 Act, the \$250,000 for cattle would never be expended unless "derived from the sale of

lands." The 1904 Act made no reference as to when such cattle might be distributed, since there could be no guarantee as to when \$250,000 would be available, particularly since not more than one-half of the uncertain proceeds of sale could be spent for cattle in any one year. Instead of a guaranteed distribution of \$158,000 per capita for each of five years, under the Act not more than one-half of the proceeds received in any one year could be paid per capita. The court of appeals saw no difference. To the Indians the failure to receive their cattle was a source of complaint.

Fourth, under Article VI, the 1901 Agreement was not effective until "signed" by three-fourths of the male adults. The 1904 Act eliminated this article. *Lone Wolf* holds the statute constitutional without Indian consent. *Lone Wolf* does not hold that there can be an effective agreement or contract without mutual consent. Yet, the court of appeals treated the unratified agreement as if it were a binding contract.

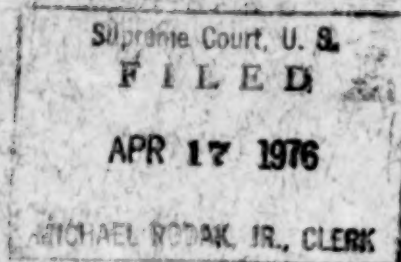
Fifth, the 1904 Act (sec. 2) reserved land for agency, school and religious purposes. The 1901 Agreement did not. The court of appeals saw no significance in this.

Sixth, the 1904 Act was an outright acquisition of the school sections for a sum certain (secs. 4, 5) and the donation of those sections to the State. The 1901 Agreement makes no reference to school sections. The court of appeals saw no difference.

Seventh, in the 1901 Agreement, the United States was the buyer for \$1,040,000. The 1904 Act (sec. 6) affirmatively specified that the statute did not "bind the United States to purchase" any land except the school land, or "to guarantee to find purchasers" or to do anything except "act as trustee * * * to dispose of said land and to

expend and pay over the proceeds * * * as received." The court of appeals ignored this.

The court of appeals made a fundamental error when it adopted the view that the 1904 Act did nothing but amend the "method of payment" in the 1901 Agreement, and concluded that the Act extinguished Indian title.



No. 75-562

In the Supreme Court of the United States

OCTOBER TERM, 1975

ROSEBUD SIOUX TRIBE, PETITIONER,

v.

HONORABLE RICHARD KNEIP, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

ROBERT H. BORK,
Solicitor General,

PETER B. TAFT,
Assistant Attorney General,

HARRY R. SACHSE,
Assistant to the Solicitor General,

EDMUND B. CLARK,

NEIL T. PROTO,

*Attorneys,
Department of Justice,
Washington, D.C. 20530.*

INDEX

Statement	Page 1
Discussion	7
Conclusion	22

CITATIONS

Cases:

Arizona v. California, 373 U.S. 546.....	11
City of New Town, North Dakota v. United States, 454 F. 2d 121.....	6, 17, 21
DeCoteau v. District County Court, 420 U.S. 425.....	6, 9, 10, 13, 14, 22
Fisher v. District Court, No. 75-5366, decided March 1, 1976.....	10
Mattz v. Arnett, 412 U.S. 481--	6, 11, 12, 14, 20, 21
Putnam v. United States, 248 F. 2d 292---	19
Scymour v. Superintendent, 368 U.S. 351	6, 8, 11, 12, 14, 16-17, 20, 21, 22
State v. Molash, 86 S.D. 558, 199 N.W. 2d 591	8, 9
State of South Dakota v. White Horse, decided August 1, 1975, No. 11319-a-JMD, S. Ct. S.D.....	8
Train v. Natural Resources Defense Council, 421 U.S. 60.....	21
Two Hawk v. Rosebud Sioux Tribe, 404 F. Supp. 1327.....	11
Udall v. Tallman, 380 U.S. 1.....	21
United States v. Holliday, 70 Wall. 407---	21

(1)

Cases—Continued	Page
<i>United States ex rel. Condon v. Erickson</i> , 478 F. 2d 684.....	6, 21
<i>United States ex rel. Cook v. Parkinson</i> , 396 F. Supp. 473.....	10
Statutes:	
Act of February 22, 1889, Section 10, 25 Stat. 676.....	15
Act of March 2, 1889, 25 Stat. 888.....	1-2, 8
Act of April 23, 1904, 33 Stat. 254..... <i>passim</i>	
Art. III.....	3
Section 2.....	3
Section 6.....	3, 4, 5
Act of March 22, 1906, 34 Stat. 80.....	8, 15, 16
Act of March 2, 1907, 34 Stat. 1230..... <i>passim</i>	
Section 5.....	3
Section 8.....	4, 5
Act of May 27, 1910, 36 Stat. 440.....	10, 19
Act of May 30, 1910, 36 Stat. 448..... <i>passim</i>	
Section 4.....	5
Section 7.....	5
Section 8.....	15
Section 9.....	15
Section 11.....	5
Act of June 1, 1910, 36 Stat. 455.....	15, 17
Section 8.....	15
Section 11.....	15
Act of February 14, 1913, 37 Stat. 675.....	8, 9
Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. 461 <i>et seq.</i> ...	8, 20
Section 3.....	20

Statutes—Continued	Page
Act of April 11, 1970, 84 Stat. 120, 25 U.S.C. 488.....	10
4 Stat. 564, 25 U.S.C. 2.....	21
18 U.S.C. 1151.....	9
18 U.S.C. 1153.....	9
42 U.S.C. 1460(h).....	11
Miscellaneous:	
40 Cong. Rec. 2272 (1906).....	15
45 Cong. Rec. 5457 (1910).....	14
45 Cong. Rec. 5794 (1910).....	14
45 Cong. Rec. 5799 (1910).....	15
45 Cong. Rec. 6741 (1910).....	15
54 I.D. 59.....	8, 20, 21

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE, PETITIONER

v.

HONORABLE RICHARD KNEIP, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted pursuant to the court's order of January 12, 1976, inviting the Solicitor General to express the views of the United States in this case. The United States supports the petition of the Rosebud Sioux Tribe for a writ of certiorari.

STATEMENT

In June 1972 the Rosebud Sioux Tribe of Indians filed suit in the United States District Court for the District of South Dakota, seeking a declaratory judgment that the exterior boundaries of the Rosebud Reservation, as defined in the Act of March 2, 1889, 25 Stat. 888, had not been altered by three Acts

of Congress (Act of April 23, 1904, 33 Stat. 254. Act of March 2, 1907, 34 Stat. 1230; Act of May 30, 1910, 36 Stat. 448) opening certain unallotted surplus lands of the Reservation to non-Indian entry and settlement.

The case arose out of the following statutory history. Under the Act of March 2, 1889, Congress expressly "restored to the public domain" (25 Stat. 896) one half of the Great Sioux Reservation established in 1868, but preserved for the Sioux Tribes six reservations in present-day North and South Dakota (*ibid.*). Among these was the Rosebud Reservation, located in the south central portion of South Dakota, composed of the Counties of Todd, Tripp and Mellette, and parts of Gregory and Lyman counties.¹

In 1901, the Rosebud Tribe agreed (Pet. App. 15, n. 21) to "cede * * * and convey to the United States" for \$1,040,000 the unallotted land in the portion of its Reservation in Gregory County for non-Indian settlement. Congress rejected this agreement in 1902 and 1903. The problem "was, simply put, money" (Pet. App. 16). Congress then "amended and modified" the agreement (Pet. App. 117) and enacted it as the Act of April 23, 1904 (Pet. App. 115-120). The primary amendments were that (1) the Indians were not

¹ A map of the Reservation, showing the 1889 boundaries and the boundaries as found by the court of appeals is reproduced at Pet. App. 113. A more detailed map is reproduced at App. IV, Doc. 43. ("App." refers to the appendix in the court of appeals; "Doc." to the document.)

guaranteed any total consideration for the land except with respect to the 16th and 36th sections (school sections), but were to be paid only as lands were actually sold to settlers;² (2) the United States did not guarantee to find purchasers but agreed only to "act as trustee for said Indians to dispose of said lands" (Section 6, Pet. App. 120); and (3) limitations were placed on the distribution of the proceeds to the Indians (compare Art. III, Pet. App. 118, with Art. III, Pet. App. 115-116).

The 1907 Act provides (Pet. App. 121) "that the Secretary of the Interior * * * is hereby, authorized and directed, * * * to sell or dispose of all that portion of the Rosebud Indian Reservation [within Tripp County] except such portions thereof as have been, or many hereafter be, allotted to Indians" (and except school sections that were to be paid for by the United States, and granted to the State).³ The 1907 Act further provides (Section 5, Pet. App. 122-123) that the funds received shall be deposited in an interest-bearing account in the Treasury of the United States "to the credit of the Indians belonging and

² Section 2 of the Act (Pet. App. 119) set forth a schedule of the prices per acre for the land, which varied according to when the land was sold.

³ Substantially identical school land provisions are contained in each Act to the effect that section 16 and 36 of the lands in each township are not to be disposed of, but are reserved for the use of the common schools of the state, and these lands are to be paid for by the government in conformity with the provisions of the act admitting the State of South Dakota into the Union. See Pet. App. 120, 121, 123, 127.

having tribal rights on the Rosebud Reservation," that the interest shall be paid annually to the Indians, that after ten years all funds up to one million dollars shall be distributed on a per capita basis to the Indians, and that the balance shall be expended or distributed for the Indians' benefit at the discretion of the Secretary of the Interior. The 1907 Act concludes, as did the 1904 Act (Section 6, Pet. App. 120), with a section declaring (Section 8, Pet. App. 123):

* * * nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the *United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received as herein provided* * * * [Emphasis added.]

The 1910 Act (Pet. App. 124-127), like the 1907 Act (Pet. App. 121),⁴ begins with an authorization to the Secretary to "sell and dispose" of surplus lands within a described portion (Mellette County) of the Reservation (Pet. App. 124) and further provides (*ibid.*):

That any Indians to whom allotments have been made on the tract to be *ceded* may, in case they

⁴ The 1907 Act uses the phrase "sell or dispose" (emphasis added).

elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the *diminished* reservation * * *. [Emphasis added.]

The 1910 Act further requires (Section 4, Pet. App. 125) that a commission be established composed of "[o]ne resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians" to determine the price settlers would be obligated to pay for the land, and that the proceeds of the sales shall be deposited in the Treasury to the credit of the "Indians belonging and having tribal rights on the said reservation," which "shall be at all times subject to appropriation by Congress for their education, support, and civilization" (Section 7, Pet. App. 126). The act concludes (Section 11, Pet. App. 127) with the same proviso as the 1904 and 1907 Acts (Section 6, 8, Pet. App. 120, 123), that the United States does not obligate itself to purchase the surplus land, except Section 16 and 36 for school purposes, and shall act only as trustee for the Indians in disposing of the surplus land.

The district court held that the 1904, 1907 and 1910 Acts each extinguished the portion of the Reservation to which they applied (Pet. App. 63-113; see *id.* at 113). The court found no language in the acts expressly terminating the Reservation in the counties involved and no "express discussion of state versus Federal jurisdiction over the lands in question" (*id.* at 85); however, the court held that in light of the "surrounding legislative history and the circum-

stances" (*id.* at 109) from 1901 to 1910, Congress intended to extinguish the portions of the Reservation at issue.

The United States Court of Appeals for the Eighth Circuit, after this Court's decision in *DeCoteau v. District County Court*, 420 U.S. 425, affirmed (Pet. App. 1-61). The court rejected arguments of the Tribe, and the United States as *amicus curiae*, that the language of the Acts interpreted in the light of prior decisions of this Court does not manifest an intent to abolish the disputed portions of the Reservation and that the legislative and administrative history does not establish such an intent. The court found discussion of prior decisions, including this Court's decisions in *Seymour v. Superintendent*, 368 U.S. 351, and *Mattz v. Arnett*, 412 U.S. 481, and its own decisions in *City of New Town, North Dakota v. United States*, 454 F. 2d 121, and *United States ex rel. Condon v. Erickson*, 478 F. 2d 684, "of limited utility" (Pet. App. 5) and concluded that "the overriding judicial inquiry remains unchanged, namely, the congressional intent" (*ibid.*). Stating that this Court's decision in *DeCoteau*, *supra*, permitted it to utilize "all materials reasonably pertinent to the legislation * * * as well as those bearing upon the historical context of its passage, such as the social forces then at work in the area * * *" (Pet. App. 8), the court found a "continuity" of circumstances from 1901 through 1904, 1907 and 1910 that demonstrated Congress' intention to extinguish the Reservation in

the areas in question (*id.* at 26-28, 34, 38, 39-40, 44, 46, 48).

DISCUSSION

We recognize the force of the court of appeals' analysis and the substantial body of legislative and other materials marshalled in support of its decision that the Acts of 1904, 1907 and 1910 extinguished the disputed portions of the Rosebud Indian Reservation. Nevertheless, for the reasons set forth below, we disagree with the court's conclusions about the effects of these statutes; in our view, the Acts in question resulted in a reduction of the amount of land owned by Indians within the Reservation boundaries, but did not extinguish portions of the Reservation itself. As to those particular Acts, of course, the decision below will be final unless reviewed by this Court; no conflict among the circuits could develop since the entire Rosebud Indian Reservation lies within the Eighth Circuit. Moreover, in light of the fact that Congress has enacted similar legislation opening up other reservations to non-Indian settlement, the decision has an impact beyond the Rosebud Indian Reservation.

1. The three Rosebud Acts involved in this case are representative of federal legislative activity with respect to Indian Reservations in the first decade of the twentieth century. During the same period, Congress enacted eighteen other similarly worded statutes under which the United States acted as agent for the Tribe in disposing of surplus land, but did not itself

purchase the land (except, in some, school sections) for return to the public domain.⁵ These statutes affect portions of five of the six Reservations preserved for the Sioux Nation under the Act of 1889, *supra*, p. 2. In 1934, the Department of the Interior decided in a formal opinion (54 I.D. 559) that this type statute does not terminate the reservation status (and thus federal and tribal jurisdiction) within the areas involved⁶ and, in *Seymour v. Superintendent*, 368 U.S. 351, 357, the Court, citing this Interior Department decision, agreed with "the agency of government having primary responsibility for Indian affairs" that the Act of March 22, 1906, 34 Stat. 80, opening up the Colville Reservation did not extinguish the portion of the Reservation at issue.

The decision below not only conflicts with the Interior Department's view of the status of the Rosebud Reservation, but also may cast doubt on the Department's determination of the status of other reservations that are affected by similar legislation.⁷ This

⁵ These statutes are listed at Pet. App. 129.

⁶ The Department's opinion so holding listed the Acts at issue here and determined that the areas in question remained within the Reservation, thus permitting return of undisposed of lands to the Tribe under the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. 461 *et seq.* (see discussion at pp. 20-22, *infra*).

⁷ For example, in *State of South Dakota v. White Horse*, No. 11319-a-JMD, decided August 1, 1975 (reproduced in part at Pet. App. 145-146), the Supreme Court of South Dakota expressly placed in doubt its earlier decision in *State v. Molash*, 86 S.D. 558, 199 N.W. 2d 591, holding that the Act of February 14, 1913, 37 Stat. 675, which contains language similar to the 1907 Rosebud Act (see 86 S.D. at 560, 199 N.W. 2d at 592, see also Pet. App.

could have serious consequences for the tribes and for the United States in its trust responsibilities.

In this case, for example, if the disputed areas are within the boundaries of the Rosebud Reservation, criminal and civil jurisdiction are in the Tribe and

145), did not diminish the exterior boundaries of the Standing Rock Reservation. In its recent decision, the court noted that it based its *Molash* decision on the wording of the statute at issue "as interpreted in *Seymour v. Superintendent* [*supra*] and *The City of New Town, North Dakota v. United States* [*supra*]," and that "we did not have the benefit of the comprehensive citations leading to an analysis of the 'legislative history' and 'surrounding circumstances' from which the intent of Congress could be established * * *"; the court stated further that the Eighth Circuit's decision in *Rosebud* had "disposed of the *Seymour* and *New Town* cases" by showing "that a congressional determination to terminate lay behind each of the Acts in question" (Pet. App. 145-146).

On April 28, 1975, the United States, at the request of the Standing Rock Tribe, brought a civil action against liquor operators on the Reservation who refused to apply for tribal licenses. *United States v. Morgan*, Civ. No. 75-1019 (D. S.D.). The operators contended the area of the Reservation where they were located was returned to the public domain by the Act of 1913, previously adjudicated to the contrary in *State v. Molash*, *supra*. The court granted a preliminary injunction ordering the operators to apply for the licenses, pending a resolution of the jurisdictional issue. Also, the United States attorney for South Dakota recently initiated criminal prosecution under the Major Crimes Act, 18 U.S.C. 1153, against eight individuals who allegedly committed crimes within the Standing Rock Reservation. *United States v. Long Elk, et al.*, No. CR75-1008, *et al.* Each defendant moved to dismiss on the basis of *Rosebud Sioux Tribe v. Kneip*, *supra*, and on April 8, 1976, the court, accepting their arguments, dismissed their indictments.

On April 21, 1975, the same district court that decided the *Rosebud* case decided *United States ex rel. Cook v. Parkinson*, 396 F. Supp. 473 (D. S.D.), and concluded that the legislative history and surrounding circumstances demonstrated that the Act of May 27, 1910, 36 Stat. 440, diminished the Pine Ridge Reservation by returning Bennett County to the public domain. The court relied on

the federal government under 18 U.S.C. 1151. If the lands are not within the Reservation, as the courts below held, the State has jurisdiction except with respect to acts involving Indians that occur on allotted lands outside the Reservation. See *DeCoteau v. District County Court, supra*, 420 U.S. at 427 n. 2. Since the areas in dispute in this case contain a large amount of trust land and a significant Indian population,⁸ the decision below not only creates a confusing pattern of federal-state-tribal jurisdiction that depends on the status of each particular lot and the persons involved, but also restricts the Tribe's authority to govern its members and thereby preserve their cultural identity. Compare *Fisher v. District Court*, No. 75-5366, decided March 1, 1976, with *DeCoteau v. District County Court, supra*, 420 U.S. at 465 n. 8 (Douglas, J., dissenting).

Moreover, any judicial decision that reduces the size of a reservation may have an adverse economic impact on the tribe and its members. The Act of April 11, 1970, 84 Stat. 120, 25 U.S.C. 488, for instance, which

its previous decision in *Rosebud* since the Pine Ridge Act was enacted three days before the 1910 Rosebud Act and had similar language. The court of appeals affirmed and a petition for a writ of certiorari is now pending, No. 75-5867, filed December 8, 1975.

⁸ The following figures have been supplied to us by the Department of Interior:

County	Indian Population (1970 Census)	Allotted Lands (Acres)	Tribal Lands (Acres)
Mellette.....	803	168,939	120,603
Tripp.....	501	62,334	12,210
Gregory.....	318	11,456	8,520

makes federal funds available to tribes for the purpose of consolidating land holdings and thereby creating agricultural units for tribal members, requires that the lands purchased with the borrowed money be "within the tribe's reservation."⁹ A tribe may also lose its eligibility for federal grants to carry out housing programs in the disputed portions of the reservation since the Department of Housing and Urban Development makes such grants only in locations where the tribe has authority to act as a "governmental entity" or "public body." See 42 U.S.C. 1460(h). Still further, a reduction in the size of a reservation might deprive the tribe of important reserved water rights that it had in the area and that were crucial to its economic well-being. Cf. *Arizona v. California*, 373 U.S. 546, 597-602.

2. In this case, the language of the Acts of 1904, 1907 and 1910 did not compel the result reached by the court of appeals. Aside from school sections, the United States agreed only to act as trustee for the Rosebud Sioux Tribe; the federal government neither purchased the land nor guaranteed to find purchasers. In *Seymour v. Superintendent, supra*, and in *Mattz v. Arnett, supra*, the Court held that similar statutes, designating the United States as a broker to sell the Indians' land to settlers, did not extinguish

The Tribe has an organized government and judicial system. See, e.g., *Two Hawk v. Rosebud Sioux Tribe*, 404 F. Supp. 1327 (D. S.D.)

⁹ By letter of November 10, 1975, the Department of Agriculture, which administers the funds, informed the Tribe that as a result of the decisions below, funds made available to the Tribe under the Act cannot be used to consolidate land holdings outside Todd County.

the parts of the reservations thus opened to settlement.

Neither does the legislative history surrounding the three Rosebud Acts establish that Congress intended these statutes to extinguish the Reservation in the areas involved. There are, to be sure, numerous statements in Committee Reports and on the floors of both Houses of Congress that the Acts had the effect of diminishing the Reservation; however, it is reasonable to view these statements, which the court below relied upon,¹⁰ as merely illustrating Congress' recognition of the obvious—that by selling their land, the Indians were reducing the size of the area they owned. But the fact that the Indians' land holdings would be diminished as the land was sold does not mean that the Reservation itself was abolished in the areas where the land subject to sale was located. This Court so held in *Seymour v. Superintendent*, *supra*, 368 U.S. at 356, and *Mattz v. Arnett*, *supra*, 412 U.S. at 496–497. One of the important consequences of abolishing the Reservation is, as we pointed out above (pp. 8–9, *supra*), the transferral of jurisdiction in the area from the Tribe and the federal government to the State. But so far as appears, there is not a word in the Acts or their legislative history to show that Congress intended or had contemplated this. See Pet. App. 85 (opinion of district court).

Since it could not be argued that Congress intended the extraordinary result of extinguishing the Reservation bit by bit as each parcel of the Indians' land was

sold to non-Indians, the reduction of the Reservation's boundaries must have occurred, if it occurred at all, by the land in question passing from Reservation status into the public domain at the moment each of the three Acts became effective. Apparently the court of appeals so concluded (see, *e.g.*, Pet. App. 27–28, 33), relying upon *DeCoteau*.

The court of appeals, however, failed to recognize the crucial difference that in *DeCoteau* the United States itself purchased the land in the reservation pursuant to an agreement with the Indians; this, the Court held, restored the land to the public domain and extinguished the reservation. 420 U.S. at 446–447. But under the Rosebud Acts, the federal government did not buy the Indians' land. The government acted merely as a trustee for the Tribe in selling its land to non-Indians, as a broker in a real estate transaction; the land passed from the Indians to private individuals. It was not first made part of the public domain; indeed, Congress appropriated no funds to pay for these lands, except for school sections. Rather, any funds distributed to or deposited on behalf of the Indians were to be derived from amounts paid by the non-Indian purchasers. If there were no buyers interested in the land the government was to sell for the Indians, the Indians would have received no money; yet according to the reasoning of the court below, the Tribe nevertheless would have been deprived of three-fourths of its Reservation. Such an intention should not be attributed to Congress without the clearest kind

¹⁰ Pet. App. 26–27, 33–34, 39–42, 45, 48, 52.

of evidence; this is why the Court has emphasized, in finding that a reservation was in fact abolished, that Congress guaranteed to pay the Indians a sum certain—in *DeCoteau* \$2,203,000. 420 U.S. at 441, 448.¹¹

3. The circumstances surrounding the enactment of the Rosebud Acts confirm that Congress did not intend to restore the disputed portions of the Tribe's reservation to the public domain. The debate on the 1910 Rosebud Act was completed in the House on April 27, 1910. 45 Cong. Rec. 5457. One week later, on May 4, 1910, a bill for the "sale and disposition of a portion of the surplus lands" in the Fort Berthold Reservation, North Dakota, was introduced by Congressman Burke, who described it as "practically in the same form" as the 1910 Rosebud Act. 45 Cong. Rec. 5794. The bill provided, *inter alia*, for the granting to the State of North Dakota of Sections 16 and 36 for school purposes, 36 Stat. 456 (Section 8), with payment for those lands to the Indians out of the United States Treasury (*id.* at section 11). A similar school lands provision had been contained in the Rosebud Act just debated. 36 Stat. 451 (Sections 8, 9). In the May 4 House debate on the Fort Berthold bill, Congressman Stafford of Wisconsin questioned

¹¹ Thus, the Court in *DeCoteau* distinguished *Mattz* and *Seymour* on the basis that the statutes in those cases (which did not reduce the size of the reservations) merely established "a fund dependent on uncertain future sales of [the tribe's] land to settlers" (*Mattz*) or "provided that the uncertain future proceeds of settler purchasers should be applied to the Indians' benefit" (*Seymour*). 420 U.S. at 448.

the purpose of the school lands provision. Congressman Burke responded (45 Cong. Rec. 5799):

This is the *same* provision that has been put into other bills of a similar nature where lands are disposed of in a State having an enabling act the same * * *. [Emphasis added.]

When the Fort Berthold bill was ~~debated~~ debated in the Senate on May 23, 1910, the purpose of the schools lands section was questioned by ~~Congressman~~ Senator Jones of Washington, the sponsor of the Colville Act of 1906. See 40 Cong. Rec. 2272.¹² The following discussion occurred (45 Cong. Rec. 6741):

Mr. JONES. What is the obligation upon the Federal Government to purchase sections 16 and 36 under the circumstances of this case?

* * * * *

My recollection of the language of the [enabling] act is that it provided for donating to the State sections 16 and 36, embraced within reservations, *when those lands were restored to the public domain.*

Mr. PURCELL. Yes.

Mr. JONES. But they have not yet been restored, *and you do not propose in this bill to restore them to the public domain.*

Mr. PURCELL. Most assuredly we do.

Mr. JONES. You provide for their sale.

Mr. PURCELL. No; I beg your pardon. They are to be taken under the homestead laws of the United States.

¹² Washington, North and South Dakota and Montana were admitted into the Union in the same Enabling Act. See Act of February 22, 1889, 25 Stat. 676, 679, Section 10.

Mr. JONES. Yes; at an appraised value.

Mr. PURCELL. Yes.

Mr. JONES. So that there is a sale. *This bill does not pretend to restore those lands to public domain.*

Mr. PURCELL. *Oh, I beg the Senator's pardon.*

Mr. JONES. It simply provides a special method of disposing of them.

* * * * *

I think I am thoroughly familiar with the terms of these various bills, and I am satisfied that these lands are *not restored to the public domain at all*. Their disposition is provided for in a special way. *The title of the Indians is recognized, and the lands are sold for the Indians*. They are to have the benefit.

I am not going to object to the bill, and I am not going to object to the provisions in it, but I did want to put in the RECORD my judgment that we are under *no obligations to purchase sections 16 and 36, because we are not restoring these surplus lands to the public domain*. [Emphasis added.]

It was clear to the ~~Congressman~~ ^{Senator} from Washington, who sponsored the 1906 Colville Act involved in *Seymour*, that the 1910 Fort Berthold Act (which has "substantially the same" provisions as the 1910 Rosebud Act) did not restore any land to the public domain. This Court held in *Seymour* that the 1906 Colville Act did not alter the boundaries of that part of the reservation and the court of appeals in *City of New Town, North Dakota v. United States*, 454 F. 2d 121 (C.A. 8), reached the same result with respect to

the 1910 Fort Berthold Act. It seems unlikely that the same Congress, considering the same type legislation, within the same month, involving the same Enabling Act, intended a different result as to the Rosebud Reservation.

4. The Department of the Interior has administered both the "opened" and "closed" portions of the Rosebud Reservation on the basis that the Acts of 1904, 1907 and 1910 did not extinguish portions of the Reservation. In April 1913, the Acting Commissioner of Indian Affairs, C. F. Hauke, submitted to the Superintendent of the Rosebud School a request for a report on the possible consequence of reorganizing the administrative structure of the Reservation (App. IV, Doc. 41). Replying to the request, the Superintendent discussed, among other things, the status of Indian allotments in the various districts (or counties) opened for settlement. He stated (App. IV, Doc. 42, pp. 3-4):

The Bull Creek District [Tripp and Lyman Counties] under Mr. Fihn as a farmer has about 1,889 allotments or 302,430 acres with a few over 800 Indians to look after. You will note that this District has more Indians and more allotments to look after than either of the other two. Still it is more compact and can more easily be looked after by Mr. Fihn than either of the other two. Again the allotments do not rent so readily in this District as in the first two mentioned. The Little White River District [Mellette County, opened in 1910] has about 968 allotments or 154,880 acres with a

few over 500 Indians to look after. While the Black Pipe District [Mellette County] has about 981 allotments aggregating 156,560 acres with a few over 500 Indians to look after.

These two Districts [Little White River and Black Pipe] are the most troublesome of any of the Districts *on the Reservation*. The Bad Lands are located largely in these Districts which makes it difficult to go from place to place on account of the bad roads. The Cut Meat District [Todd County] has about 1,332 allotments with 299,120 acres, and a few over 1,000 Indians to look after. While it seems to be a large District, still there is but very little leasing of our Indian lands or allotments, *it being in the closed portion of our Reservation*, and the allotments are more compact with small farms in the District. The Agency has some over 1,200 Indians to look after, and is one of the largest Districts, but the farmer is assisted materially by being located in the Agency. [Emphasis added.]

The Superintendent and the Interior Department thus considered Mellette, Tripp, and Gregory Counties to be part of the Rosebud Reservation. Each county, Todd, Tripp, Gregory and Mellette, was considered part of the Rosebud Reservation, while Todd County—the only one not opened to settlement—was distinguished as representing “the closed portion of our Reservation.”¹³

¹³ See also *Putnam v. United States*, 248 F. 2d 292 (C.A. 8), holding that trust allotments in Bennett County, South Dakota, are within the Pine Ridge Reservation, albeit the part “opened” by virtue of the Pine Ridge Surplus Land Act of May 27, 1910, 36 Stat. 440.

To the same effect is the April 21, 1913, report of the Interior Department's Supervisor of Industries and Agriculture regarding his inspection of portions of the Rosebud Reservation, which states (App. IV, Doc. 44, pp. 1-2:

The reservation is divided into farmers' districts, and I believe an honest effort is being made to induce the Indians to farm * * *. * * * In the *Ponca District* [Gregory and Tripp Counties] *at the east end of the reservation* there is a Teacher in Charge residing at the Milk's Camp Day School. His duties are exactly the same as that of the additional farmers.

Practically all of the day school teachers have been raising good gardens for a considerable time. * * * Except in the *Ponca District at the east end of the reservation*, which is a farming district, I do not consider the Rosebud country a farming country.¹⁴ [Emphasis added.]

Moreover, all services of the Bureau of Indian Affairs have been afforded to Indian residents of the entire Reservation, including the areas in dispute.

5. The court of appeals gave inadequate consideration to the view of the Department of the Interior that the Acts at issue here and similar acts did not remove the land affected by them from Reservation status. See 54 I.D. 559, cited by this Court in *Seymour* (see p. 8, *supra*). The process of disposing of “surplus” Indian lands to non-Indians ended with the

¹⁴ The report also discussed the effect of a drought and other adverse conditions (App. IV, Doc. 44, p. 2): “As to the rest of the reservation it is significant that the majority of the homesteaders have starved out and abandoned their claims. It was almost the rule to find these claims abandoned.”

passage of the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, which additionally authorized the Secretary of the Interior "to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened" (*id.* at Section 3).

Congress thus directed the Secretary to identify those Acts that "opened" but did not extinguish portions of Indian reservations, and thus left reservations in which land could be restored to the tribes. The Secretary distinguished between reservations in which surplus lands had been ceded to the United States for a cash consideration and those which "have been opened, the Indians to receive the proceeds of sale only as the tracts are disposed of" (54 I.D. at 561). As to the former the Secretary stated "[t]he lands thereby separated from a reservation were no longer looked upon as being a part of that reservation" (*id.* at 560). But as to the latter the reservation status continued and undisposed of lands could be returned to the tribes (*id.* at 561). The Secretary then listed the Acts under which reservation status continued and included the three Rosebud Acts at issue here (*id.* at 561-562).¹⁵ The opinion below does not refer to the

¹⁵ The list also includes the Acts opening the Klamath River Reservation in 1892 (*Mattz v. Arnett, supra*); the Colville Reservation in 1906 (*Seymour, supra*); the Cheyenne River Reservation in 1908 (*United States ex rel. Condon v. Erickson, supra*); and the Fort Berthold Reservation in 1910 (*City of New Town, North Dakota v. United States, supra*), all of which have subsequently been held not to terminate the area of Reservation in question. See also *Mattz, supra*, 412 U.S. at 497n. 19. Similarly,

1934 Interior Department opinion, although it was accorded particular significance by this Court in assessing the 1906 Colville Act in *Seymour* (368 U.S. at 357 n. 14) and was brought to the court's attention here.

Similarly, in 1972, before the commencement of this litigation, the Field Solicitor of the Department of the Interior ruled that the Rosebud Acts (in question here) did not terminate reservation status (and thus federal jurisdiction) within the areas in question (App. IV, Doc. 56).

Congress has entrusted to the Secretary of the Interior "all matters" arising out of relations with the Nation's Indians (4 Stat. 564, 25 U.S.C. 2). The Secretary's interpretation of statutes such as these affecting the lives and property of Indians, and the exercise of the United States' trust responsibility, should not be disregarded unless there are compelling indications that it is wrong. *United States v. Holliday*, 70 Wall. 407, 419; *Seymour v. Superintendent, supra*, 368 U.S. at 357; *Mattz v. Arnett, supra*, 412 U.S. at 505; cf. *Udall v. Tallman*, 380 U.S. 1, 16; *Train v. Natural Resources Defense Council*, 421 U.S. 60, 75-87.

on March 22, 1976, the United States District Court for the Northern District of California held (in *Russ v. Wilkens*), that the Act (listed in 54 I.D. 559) opening the Round Valley Reservation (with the Indians to receive the proceeds as the lands are sold) did not alter the boundaries of the reservation, citing *Seymour, supra*, and *Mattz, supra*, and distinguishing *DeCoteau, supra*. We are lodging a copy of the opinion with the Clerk.

Significantly the list does not include the Lake Traverse Reservation involved in *DeCoteau*.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER R. TAFT,
Assistant Attorney General.

HARRY R. SACHSE,
Assistant to the Solicitor General.

EDMUND B. CLARK,

NEIL T. PROTO,
Attorneys.

APRIL 1976.



MAY 12 1976

JR., CLERK

IN THE
Supreme Court of the United States

October Term, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

**REPLY BRIEF FOR
RESPONDENTS IN OPPOSITION**

William J. Janklow
Attorney General
State of South Dakota
Capitol Building
Pierre, South Dakota 57501

William F. Day, Jr.
Attorney for the Four Counties
Fifth and Main Street
Winner, South Dakota 57580

Tom D. Tobin
Special Assistant Attorney General
422 Main Street
Winner, South Dakota 57580

Attorneys for Respondents

TABLE OF CONTENTS

	Page
TABLE OF CITATIONS	i
INTRODUCTORY STATEMENT	1
ARGUMENT	4
I. THE INCONSISTENT POSTURE OF THE UNITED STATES BELIES THE MERITS OF ITS PRESENT ASSERTION.	4
II. THE NEW POSITION OF THE UNITED STATES IS IN CONFLICT WITH THE LANGUAGE, LEGISLATIVE HISTORY AND SURROUNDING CIRCUMSTANCES OF THE THREE ROSEBUD ACTS.	10
A. THE UNCERTAIN-SUM-IN-TRUST ARRANGEMENT	13
B. PERIPHERAL DOCUMENTATION	15
1. The Diminished Reservation Argument ...	17
2. The 1934 Indian Reorganization Act	23
CONCLUSION	28

TABLE OF CITATIONS

CASES:	Page
Beardslee v. United States, 387 F.2d 280 (C.A. 8, 1967)	2
DeCoteau v. District County Court, 420 U.S. 425 (1975)	passim
Mattz v. Arnett, 412 U.S. 481 (1973)	passim
Rosebud Sioux Tribe v. Kneip, et al., 375 F.Supp. 1065 (D.S.D., 1974)	passim
Rosebud Sioux Tribe v. Kneip, et al., 521 F.2d 87 (C.A. 8, 1975)	passim
Seymour v. Superintendent, 368 U.S. 351 (1962)	passim
State v. White Horse, 231 N.W.2d 847 (S.D., 1975)	4

United States ex rel. Condon v. Erickson, 478 F.2d 684 (C.A. 8, 1973)	23
United States ex rel. Cook v. Parkinson, et al., 525 F.2d 120 (C.A. 8, 1975)	18
United States v. Pelican, 232 U.S. 442 (1914)	2, 19
ACTS AND STATUTES:	
Act of February 8, 1887, 24 Stat. 388	passim
Act of March 2, 1889, 25 Stat. 888	
Act of March 3, 1891, 26 Stat. 1035	passim
Act of May 27, 1902, 32 Stat. 263	25
Act of May 30, 1910, 36 Stat. 443	17
Act of June 18, 1934, 48 Stat. 984	23
18 U.S.C. §1151	passim
MISCELLANEOUS:	
Cohen, Felix S., Handbook of Federal Indian Law, University of New Mexico Press	20
H.R. Rep. No. 429, 61st Cong., 2d Sess. 2 (1910)	21
Letter from the Secretary of the Interior to Senator Gamble	22
Restoration Order of Oscar L. Chapman, Assistant Secretary of the Interior, June 12, 1941	27

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR RESPONDENTS IN OPPOSITION

INTRODUCTORY STATEMENT

By order of January 12, 1976, this Court invited the Solicitor General to express the views of the United States in the above-entitled case. Four months later, on April 17, 1976, the Solicitor General, as *amicus curiae*, submitted a 22-page Memorandum in support of the position of Petitioner. This Brief is respectfully submitted in response to certain arguments in the Memorandum for the United States that Respondents deem worthy of the special attention of this Court.

Because of the paramount importance of certain provisions of the General Allotment Act of 1887, 24 Stat. 388, discussed herein, the following preliminary observations are appropriate. Section 5 of the General Allotment Act was the controlling provision of the General Allotment Act cited and analyzed in *DeCoteau v. District County Court*, 420 U.S. 425 (1975). Both in *DeCoteau* and below, Section 5 served as the basis for certain surplus land cessions or sales approved and enacted in special statutes by Congress. If the language, legislative history and surrounding circumstances of any one of these special statutes enacted pursuant to Section 5 makes clear that Congress intended to disestablish a distinct portion of the reservation affected, then this Court has held in such a situation that:

exclusive tribal and federal jurisdiction is limited to the retained allotments. 18 U.S.C. § 1151(c). See, *United States v. Pelican*, 232 U.S. 442. *DeCoteau*, *supra* at 446-447.

In *Beardslee v. United States*, 387 F.2d 280 (C.A. 8, 1967), 18 U.S.C. § 1151(c) was also found to be applicable to the areas affected by the *Rosebud* Acts. *Beardslee*, *supra* at 287.

Distinguishable from this situation is the alienation of the Indian land base through other sections of the General Allotment Act. In many reservations the issuance of allotments and eventual patents in fee to individual members of the tribes pursuant to these other sections of the General Allotment Act soon resulted in a checkerboard problem. Moreover, the "citizenship" and the "subject to the laws of the state and territory" provisions of Section 6 of the General Allotment Act further complicated this checkerboard problem. In response, in 1948 Congress enacted 18 U.S.C. § 1151(a). Since neither the issuance of the patents in fee nor the "citizenship" and "subject to the laws" provisions of Section 6 of the General Allotment Act actually disestablished any reservation boundaries, the new definition of Indian

Country set forth therein solved the problem. Respondents do not question this fact. Nor do Respondents question that in this respect, the General Allotment Act never operated to disestablish any reservation or transfer any jurisdiction to any state. However, as *DeCoteau* attests, appropriate congressional action under Section 5 of the General Allotment Act most certainly accomplished this objective.

The United States in *DeCoteau* sought to confuse the two distinguishable situations and capitalize on the checkerboard problem that Congress corrected in 1948 by enacting 18 U.S.C. § 1151(a). Memorandum for the United States as *Amicus Curiae* at 5 (U.S.S.C., 1974), Brief for United States as *Amicus Curiae* at 11, 17, 29 (U.S.S.C., 1974).¹ However, this Court recognized the distinction and rejected the position of the United States. In the instant case, the United States again seeks to confuse the two situations. M.U.S. at 10. The *Rosebud* Acts are within the purview of the *DeCoteau* distinction: namely, Section 5 of the General Allotment Act of 1887. Moreover, the language, legislative history and surrounding circumstances of the *Rosebud* Act makes *Rosebud* even clearer than *DeCoteau* in terms of congressional intent. The *Rosebud* Acts do not represent a purported disestablishment via allotments or other "subject to the laws" provisions of Section 6 of the General Allotment Act.

Of course, in *Rosebud* as in *DeCoteau*, there is also some limited checkerboard jurisdiction in the areas of the original Reservations affected by the Acts — approximately 15 percent of the land is still held in trust in both areas. *DeCoteau*, *supra* at 428. But these areas are not the problem areas Congress addressed in 1948 by enacting 18 U.S.C. § 1151(a). They were not then within the boundaries of any reservation. Moreover, the limited checkerboard jurisdiction therein was not then nor is it now a question of legitimate concern.

Hereinafter cited as M.U.S. and B.U.S.

Unlike *DeCoteau*, however, in *Rosebud* one part of the original Rosebud Reservation was never affected by any special statute enacted pursuant to Section 5 of the General Allotment Act. As such it was plagued by the problems of the patents in fee and Section 6 of the General Allotment Act discussed *supra*. This is Todd County — the diminished Rosebud Reservation. In 1948 Congress solved the problem in Todd County by enacting 18 U.S.C. § 1151(a). The status of Todd County and this aspect of the General Allotment Act is not in issue here. It is the Rosebud Reservation.⁴

ARGUMENT

I

THE INCONSISTENT POSTURE OF THE UNITED STATES BELIES THE MERITS OF ITS PRESENT ASSERTION.

A cursory examination of the briefs and memoranda that the United States has filed in this and other similar cases within the last three years is in many respects instructive. At the outset, it is evident that the posture of the United States has shifted with the signs of the times. Prior to the decision of this Court in *DeCoteau v. District County Court*, 420 U.S. 425 (1975), the same individuals primarily responsible for the Memorandum in the instant case took the position in the Eighth Circuit Court of Appeals that the 1891 *DeCoteau* Act was "identical in effect to the three Acts in controversy here."

⁴With respect to the other counties that are in issue in the instant case, the decision below simply maintains the status quo. These counties have not been considered to be within the boundaries of the original Rosebud Reservation since the passage of the Rosebud Acts. *Rosebud*, *supra* at 1083. *Rosebud*, *supra* at 89. As the Supreme Court of South Dakota noted in a recent case that presented the question of whether that portion of the original Rosebud Reservation situated in Tripp County was disestablished by the 1907 Rosebud Act: "The State of South Dakota has exercised criminal and civil jurisdiction over the years with the full acquiescence of all responsible federal authorities. *State v. White Horse*, 231 N.W.2d 847 (S.D. 1975). Less than 10% of the resident population is enrolled in the Rosebud Sioux Tribe.

B.U.S. at 38 (C.A. 8, 1974). In general, the purported philosophy of the General Allotment Act was designated as the fundamental basis for the position of the United States:

The Acts of 1904, 1907 and 1910 affecting the Rosebud Sioux Reservation are only three of the many Acts which between 1887 and 1913 opened Indian reservations for allotments to individual Indians and settlement of surplus lands by non-Indians. These special Acts are modifications of the General Allotment Act designed to apply to specific reservations. While they vary in detail, they rather uniformly provide for allotments to individual Indians within the reservation, make surplus land available to homesteaders, and provide that the proceeds from the disposition of the surplus lands will be used for the benefit of Indians on the reservation. B.U.S. at 35 (C.A. 8, 1974) (emphasis added).

Before this Court in *DeCoteau*, the position of the United States still remained essentially the same in this respect. Both forms of the statutes, the 1891 *DeCoteau* Act and the Rosebud Acts in general, were a part of the same overall congressional plan. In urging this Court to grant certiorari and reverse the decision of the Supreme Court of the State of South Dakota it was stated that:

We agree with the decision of the United States Court of Appeals for the Eighth Circuit in *United States ex rel. Feather v. Erickson*, 489 F. 2d 99, petition for a writ of certiorari pending, No. 73-1500 (Pet. App. D), that the effect of the 1892 [1891] Act was not to change the reservation boundaries but to permit homesteading of "surplus" lands within the Reservation in accordance with the *General Allotment Act*. . . .

Both forms of statute, with some variations in wording, were repeatedly used in opening reservations under the General Allotment Act. The earlier statutes tended to be written in terms of sale of un-

allotted land to the government for homestead purposes, while the later statutes often spoke of ceding unallotted land in trust to the government for homestead purposes. Note 3. These are only two of the techniques employed by the government *within* Indian reservations. They may be contrasted with statutes terminating reservations, or changing or diminishing their boundaries. . . .

There is no reason to believe that Congress, in choosing conveyance of 'surplus' land to the United States to be conveyed only to homesteaders, rather than having the United States act specifically as trustee for the Tribe in conveying such lands to homesteaders, intended to alter the reservation boundaries . . . M.U.S. at 4-5, 6, 8 (U.S.S.C., 1974) (emphasis added).

In the brief on the merits in *DeCoteau* the Solicitor General reiterated:

It is the position of the United States, in accord with the decision of the Eighth Circuit in *Erickson*, that the Act of March 3, 1891, did not disestablish the Lake Traverse Indian Reservation. . . .

The Agreement, in its preamble, twice states that it is made under the authority of the Act of February 8, 1887, the General Allotment Act, and quotes from that Act the language which authorizes the President, after allotments have been made, to negotiate with Indian tribes for the sale of their unallotted lands. . . .

Several things are immediately apparent. The negotiation with the Indians, the allotments to them, and the cession made by them are expressly made under the authority of the General Allotment Act. . . .

THE REFERENCES TO THE GENERAL ALLOTMENT ACT SHOW THE RESERVATION WAS MAINTAINED. Both the 1889 Agreement and 1891 Act were adopted pursuant to the General Allotment Act of 1887. . . .

In sum, while the General Allotment Act of 1887 provided for some settlement of non-Indians within the reservations, the congressional intent was to continue the reservation system and to maintain established relations with the Tribes and federal trust responsibility over the reservations until these protections were no longer necessary. The 1889 Agreement and 1891 Act were adopted in conformity with this policy and should not be held to have tacitly abolished or diminished the Reservation here in question. . . .

THE PAYMENT ARRANGEMENT OF THE ACT DID NOT CHANGE THE RESERVATION BOUNDARIES . . . The payment, realistically, was no more immediately available to the Tribe than if it had been paid only as each tract was sold.

Consequently, payment in this manner is *not* a reliable indication of an intent by Congress to change the boundaries of a reservation. Where the references to allotment and opening under the General Allotment Act are as specific as they are here and where, as here, there is no language even arguably disestablishing a discrete part of the Reservation, the payment scheme does not indicate disestablishment any more than would a scheme of payment as individual lots are sold to homesteaders. *In either situation, the conveyance of the unallotted lands is handled by the government for the benefit of the Tribe in accordance with the General Allotment Act without thereby terminating the Reservation.* B.U.S. at 9, 13, 14, 15, 16, 17, 19, 20 (U.S.S.C., 1974) (emphasis added).

At oral argument, the position of the United States was again made clear. The General Allotment Act of 1887 marked a departure in terms of a continued congressional policy that had formerly disestablished reservations. This was the focal point of the position of the United States. The fact that in *DeCoteau* payment was provided by a sum-certain-in-trust arrangement was not deemed by the United States to be of any significance whatsoever.

After this Court in *DeCoteau* rejected the United States' view of Section 5 of the General Allotment Act and the *DeCoteau* opinion undermined the crux of the position of the United States, the United States departed from its previous position. As a result of this departure, the same counsel for the United States is again before the Court in the instant case, but the Act in *DeCoteau* is no longer "identical in effect to the three Acts in controversy here." B.U.S. at 38, (C. A. 8, 1974). There is now a "crucial difference." M.U.S. at 13. It is the uncertain-sum-in-trust manner of payment present in *Rosebud* — although the United States in *DeCoteau* did not deem "payment" in any "manner" to be a "reliable indication of an intent by Congress" with respect to the issue of disestablishment. B.U.S. at 20 (U.S.S.C., 1974).

Moreover, although the three *Rosebud* Acts are even more irrevocably intertwined with Section 5 of the General Allotment Act, Section 5 no longer has anything to do with the basic issue to be resolved. Indeed, the Memorandum does not even bother to cite the very Act which until *DeCoteau* constituted, in terms of congressional continuity, the crux of the entire argument of the United States.

According to the United States, the focal point of attention should now only encompass the uncertain-sum-in-trust arrangement which in *Rosebud* Congress adopted between 1902 and 1904 — the "crucial difference." Ironically, even in this respect, the Memorandum does not cite a single *Rosebud* document to support this argument. For support, rather than addressing the thrust of the *DeCoteau* opinion with respect to Section 5 of the General Allotment Act of 1887 or the documentation or rationale of the opinions below, the United States, as in *DeCoteau*, argues blindly for a recognition of the end result of what was only a minor part of the fact situation in *Seymour v. Superintendent*, 368 U.S. 351 (1962), and *Mattz v. Arnett*, 412 U.S. 481 (1973). Although Respondents submit that here, as in *DeCoteau*, the position of the United

States is not persuasive, the rationale underlying this new position is of some interest.

It would appear to Respondents that the only plausible explanation for the Memorandum of the United States, which adopts *carte blanche* the arguments of Petitioner, irrespective of a multitude of prior inconsistencies which are a matter of record, is that for some reason the United States no longer views itself simply as a "friend of the court." It has truly assumed the role of an advocate in this type of litigation. In this respect, when one considers it is common knowledge in the Office of the Solicitor General that the only reason that the United States initially refused to lend its support to the Petition in the instant case centered around the strategical analysis that *DeCoteau* was too fresh in the mind of this Court and the fact situation in *Rosebud* too strong and too akin to *DeCoteau* — that as a result, *Rosebud* might well be "written off" in the interest of selecting a better uncertain-sum-in-trust case to support after a more appropriate lapse of time — such a conclusion is almost inescapable. Although the Order of this Court dated January 12, 1976, subsequently left the Office of the Solicitor General with little choice in the matter, at least insofar as taking some position was concerned, the basic facts remain acknowledged. The philosophy and persuasion that was eventually responsible for even convincing certain individuals in the Office that had continued to oppose this new role evidently bore fruit — as the document which is now submitted by the United States as a friend of the Court attests.

Apart from the fact that Respondents are understandably dissatisfied with the end result, although Respondents did not elect to participate in this process of persuading the Office of the Solicitor General one way or the other, the true significance of the entire sequence of events lies in the manner in which the Memorandum should now be viewed. Rather than continuing to clothe the United States with a

higher degree of objectivity than is ordinarily accorded *amicus curiae* participation, Respondents would submit that, in light of its new role, this Court should view its work product accordingly. With this point in mind, the specific arguments in the Memorandum can now be addressed.

II

THE NEW POSITION OF THE UNITED STATES IS IN CONFLICT WITH THE LANGUAGE, LEGISLATIVE HISTORY AND SURROUNDING CIRCUMSTANCES OF THE THREE ROSEBUD ACTS.

In the initial Brief to this Court, it was stated that Respondents would not attempt, within the confines of a Brief in Opposition to the Petition, to once again set forth at length the language of the Rosebud documents that refute each and every argument in the Petition that was presented and rejected by the courts below. In this respect, Respondents relied solely on the opinions below. They set forth the essence of what this Court deemed controlling in *DeCoteau*: the language, legislative history and surrounding circumstances of the Act in question. *DeCoteau, supra* at 448. This documentation forms the crux of the position of Respondents.

As was the case with the Petition, Respondents would submit that in general there is nothing of substance in the Memorandum of the United States that was not presented by the United States and rejected below. For this reason, Respondents will adhere to the same basic format and again primarily rely on the persuasiveness of the opinions below, both of which set forth the substance of the documents as clearly and concisely as it was possible to do in a written opinion.

The Brief in Opposition did deal extensively with the fact that the language, legislative history and surrounding cir-

cumstances of the three Rosebud Acts fit squarely within the historical circumstances this Court set forth in *DeCoteau*. In *DeCoteau*, this Court made clear the continuity of congressional purpose evidenced by Section 5 of the General Allotment Act. If it were possible to reduce the new position of the United States to a sentence, Respondents believe that it could be fairly stated as follows: That since some point in time must mark a departure from a continued congressional policy of disestablishing reservations or portions thereof, and since *DeCoteau* makes clear that point in time cannot be the enactment of the General Allotment Act of 1887, then the subsequent adoption of the uncertain-sum-in-trust arrangement by Congress in 1902-1904 must, by implication, constitute this point in time. Apart from the documentation that effectively erodes this position presented in the Brief in Opposition and the opinions below, Respondents deem the following additional comments worthy of special notation.

A. THE UNCERTAIN-SUM-IN-TRUST ARRANGEMENT.

Respondents noted *supra* that at the outset, in the absence of additional documentation, the United States has already substantially undermined the credibility of any new argument along these lines that it might advance in light of its position to the contrary that was briefed and argued in 1974 and 1975. If in 1974 and 1975 the United States viewed the General Allotment Act as the congressional thread of continuity that appears throughout certain surplus land statutes from 1887 to 1913, some new material or document must surface to substantiate a contrary position today. The mere fact that this Court in *DeCoteau* found the "familiar forces" exemplified by Section 5 of the General Allotment Act to be *opposite* to that urged by the United States in *DeCoteau* does not disturb the continuity of the format of the surplus land statutes in general. *DeCoteau, supra* at 432, 433, 434, 438, 441.

Significantly, the Memorandum is silent on the point. No new documentation or rationale is cited in support of the position that the uncertain-sum-in-trust arrangement was intended by Congress to alter the established policy of the Government noted in *DeCoteau*. In fact, the United States actually acknowledges the very crux of Respondents' argument — it cites with approval the opinion of the court below: "The problem 'was, simply put, money.' " M.U.S. at 2. In other words, the United States has conceded that all Congress did in *Rosebud* was balk at the thought of continuing to appropriate large sums of tax dollars to fund the 1901 Rosebud certain-sum-in-trust arrangement that was identical in all respects to the Act in *DeCoteau*.

In its stead, Congress formulated the uncertain-sum-in-trust method of which the 1904, 1907 and 1910 Rosebud Acts are representative. Congress did not intend this fact to alter its established policy and the United States cannot cite any congressional documentation in support of a position to the contrary. In light of the absence of even one contemporary document from any Rosebud source in the Memorandum to detract from the multitude of Congressional documentation that does evidence a continued Congressional policy of disestablishment, Respondents would submit that this general concession is decisive of the merits of the position of the United States.

Moreover, the position of the United States that the uncertain-sum-in-trust arrangement now constitutes the crux of the "crucial difference" between the Rosebud Acts and the certain-sum-in-trust Act construed in *DeCoteau* does not find support in the broad general provisions of Section 5 of the General Allotment Act of 1887 or Section 12 of the Rosebud Act of March 2, 1889, 25 Stat. 888. As Respondents pointed out in the Brief in Opposition at 18, because the original Rosebud Reservation was not delineated as such until the Act of March 2, 1889, certain provisions of the General

Allotment Act of 1887 were actually incorporated verbatim therein. As a result, Section 12 of the 1889 Rosebud Act, pursuant to which all Rosebud legislation was negotiated, amended and enacted, and Section 5 of the General Allotment Act of 1887, pursuant to which the Act construed in *DeCoteau* was negotiated, amended and enacted, are one and the same. Both provide that the only restriction on the manner of payment for the "purchase and release" of "such portions" of the "reservation not allotted" that the tribes were to "sell" was simply:

Such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians. Act of February 8, 1887, Section 5, 24 Stat. 388; Act of March 2, 1889, Section 12, 25 Stat. 888.

Equally broad language was drafted to govern the terms of the eventual disposal of the certain portions of the reservation to the bona-fide settlers — namely, "such terms as Congress shall prescribe." February 8, 1887, Section 5, 24 Stat. 388; Act of March 2, 1889, Section 12, 25 Stat. 888. In both instances, here, as in *DeCoteau*, Congressional discretion was virtually unlimited. In terms of the statutory format for payment, the general prerequisites in *DeCoteau* and *Rosebud* are one and the same.

Even more significant in terms of the precise issue before the Court is the manner in which Congress, later in the same mutual provision, described the portion of the reservation so affected in relation to the eventual disposition of the proceeds:

Purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians to whom such reservation belonged. Act of February 8, 1887, Section 5, 24 Stat. 388; Act of March 2, 1889, Section 12, 25 Stat. 888, (emphasis added).

In *DeCoteau* and in *Rosebud*, in their origin all of the Acts undermine rather than support the new position of the United States.

Secondly, in order to compensate for the lack of any congressional support actually evidencing a departure in congressional policy, the United States has seized upon the fact that an uncertain-sum-in-trust arrangement was also utilized in the two Acts construed in *Seymour* and *Mattz*. Armed with this superficial similarity, the United States reasons that since this Court held that the reservations affected in *Seymour* and *Mattz* remained intact, this Court must also find that Congress intended that the original Rosebud Reservation would remain intact.

Such an argument could only be persuasive if the Rosebud documents were devoid of substantial evidence of a congressional intent to the contrary. The opinions below attest that this is not the case. Like the Petitioner, the United States simply ignores the substance of this documentation. Initially, the Memorandum states:

We recognize the force of the court of appeals' analysis and the substantial body of legislative and other materials marshalled in support of its decision that the Acts of 1904, 1907 and 1910 extinguish the disputed portions of the Rosebud Indian Reservation. Nevertheless, for the reasons set forth below, we disagree with the Court's conclusions about the effects of these statutes. . . . M.U.S. at 7.

The persuasiveness of the "reasons" for "disagreement" set forth thereafter is exemplified by the fact that the Memorandum neglected to squarely address any of the "materials marshalled in support" of either of the decisions below.

Respondents would submit that the reason for the failure on the part of the United States to squarely address any of

the statements in the House and Senate Reports and the *Congressional Record* by the sponsors of the Rosebud legislation, set forth and relied upon by the courts below, can only be that the same documentation is in such irreconcilable conflict with the carefully laid theory of the United States that it is susceptible of no other treatment. No degree of sophistication alone can weather a full exposure to the Rosebud documents. The courts below set forth this documentation and the manner in which the United States has replied is instructive.

Moreover, the superficial similarity argument also ignores that in general, the quest in *Seymour* and *Mattz* was for congressional intent. In *Seymour* and *Mattz*, the uncertain-sum-in-trust provision was but one of many other and more significant factors set forth in the opinions that *in toto* "militated persuasively against" a finding of disestablishment in the specific fact situations presented therein. *DeCoteau*, *supra* at 448. In light of this compelling distinction, there is no rule of statutory construction that calls for a uniformity of results. *DeCoteau* quelled this misconception. In this respect, the position of the United States is again strikingly similar to the arguments and briefs it submitted in support of a recognition of the existence of the original boundaries of the Lake Traverse Reservation in *DeCoteau*. Namely, a repeated plea for a blanket adherence to the end results of *Seymour* and *Mattz* in every case irrespective of the substantial body of evidence of a congressional intent to the contrary in the language, legislative history and surrounding circumstances of the particular act in question.

B. PERIPHERAL DOCUMENTATION.

Another related aspect of the Memorandum for the United States in the instant case that is even more reflective of the Memorandum and Brief submitted by the United States in *DeCoteau* is the type of peripheral documentation that is

specifically submitted in support of the conclusion of the United States that Congress intended that the original Rosebud Reservation would continue to exist as such. For the most part, this peripheral documentation consists of materials and arguments that were found not to be persuasive in *DeCoteau* either because they were unrelated to the issue of congressional intent before the Court or because they were not reliable indicia of congressional intent in a case where the record was replete with sufficient probative documentation to the contrary. In *Rosebud*, the same peripheral documentation is subject to the same deficiencies.

Within the confines of a Reply Brief, there is no reason for Respondents to separately address at length each example of this type of documentation presented in the Memorandum. The opinions below and the Briefs in Opposition adequately reflect the tenor of the Rosebud Acts and the Rosebud documents. Administratively, in their proper perspective, the two letters of the local school superintendent and the Interior employee from which the United States quotes at length, are probative of nothing. M.U.S. at 17-19.¹

Even a cursory review of the *DeCoteau* briefs would reveal the fact that the same local field solicitor of the Bureau of Indian Affairs that in 1972 concluded that the Rosebud Acts did not disestablish any portion of the original Rosebud Reservation (M.U.S. at 21), also reached the same conclusion in another 1972 opinion directed to the original Lake Traverse Reservation. M.U.S. at 25 (U.S.S.C., 1974). Similarly, when one considers the 3,000 pages of Rosebud documents from which the "surrounding circumstances" of the Rosebud Acts could have been reconstructed, the fact that the United States was forced to rely solely on two paragraphs of

¹See, M.U.S. at 22-23 (U.S.S.C., 1974) where the United States in *DeCoteau* presented similar "evidence" in support of an administrative recognition which "confirmed" that the *DeCoteau* Act did not disestablish the Lake Traverse Reservation.

questionable debate from another Act for support speaks for itself. M.U.S. at 16. Therefore, the remainder of this Reply Brief will be addressed only to the two detailed arguments presented by the United States yet to be discussed.

1. The Diminished Reservation Argument. The diminished reservation argument of the United States is listed foremost as one of the reasons the United States disagrees with the conclusions below. M.U.S. at 7, 12. According to the United States, the proper construction of the term diminished reservation is simply a "reduction of the amount of land owned by Indians within the Reservation boundaries." M.U.S. at 7. For this reason, the term does not denote a corresponding reduction of reservation boundaries.

Respondents would initially point out that this same argument has been repeatedly briefed and rejected in the instant case. In addition to the "numerous statements in Committee Reports and on the floors of both Houses of Congress that the Acts had the effect of diminishing the Reservation" to which the United States simply refers to at 12 as "*statements which the court below relied upon,*" the 1910 Rosebud Act *on its face* states:

That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish the same and select allotments in lieu thereof on the *diminished* reservation. Act of May 30, 1910, 36 Stat. 443 (emphasis added).

Thus, the significant role that the proper construction of the term plays in the Rosebud documents is beyond question.

The court below addressed the diminished reservation argument, then advanced by Petitioner, in the following terms:

Whatever question there may be as to the proper interpretation of "diminished," that is, whether it

means diminution by the carving out of a described area with concomitant change of boundaries, or a diminution by sale of lots to non-Indians without changing the boundaries, upon the facts before us it is clear that the parties contemplated a carving out process. Such descriptions of the effect of the negotiations, found in both pre-agreement and post-agreement materials as we cited above are persuasive as to intent. *Rosebud*, *supra* at 99 (emphasis added).

In this respect, as in all others, Respondents would submit that the conclusion of the court is clearly correct.

The Brief for the State of North Dakota, et al., as *amicus curiae* in Opposition in a related case where a Petition for Certiorari has also been filed and a similar argument presented, adds credence to the opinion of the court below in this respect.⁴ In *DeCoteau*, as North Dakota noted, this Court used "diminished reservation" in a sense that involved a necessary and corresponding adjustment of reservation boundaries.

It is true that the Sisseton-Wahpeton Agreement was unique in providing for cession of all, rather than simply a major portion of, the affected tribe's unallotted lands. But, as the historical circumstances make clear, this was not because the tribe wished to retain its former reservation, *undiminished*, but rather because the tribe and the Government were satisfied that retention of allotments would provide an adequate fulcrum for tribal affairs. In such a situation, exclusive tribal and federal jurisdiction is limited to the retained allotments. 18 U.S.C. 1151(c). See *United States v.*

⁴*United States ex rel. Cook v. Parkinson, et al.*, 525 F.2d 120 (C.A. 8, 1975), No. 75-5867. In all, eleven separate states, by their Attorneys' General have joined the State of North Dakota in support of the position of Respondents in Opposition to the Petition in *Cook* and the Petition in the instant case. Briefs for the State of North Dakota et al., in Opposition, Nos. 75-562, 75-5867.

Pelican, 232 U.S. 442. With the benefit of hindsight, it may be argued that the tribe and the Government would have been better advised to have carved out a diminished reservation, instead of or in addition to the retained allotments. *DeCoteau*, *supra* at 446-447.

Historically, it is not surprising that in *DeCoteau*, "diminished reservation" was used to describe only those situations where diminished reservation meant diminished reservation boundaries. In terms of the decisions of this Court, this is the same construction that has consistently been attributed to the term at least as far back as 1914 when this Court decided *United States v. Pelican*, 232 U.S. 442 (1914):

The same considerations, in substance, apply to the allotted lands which, when the reservation was diminished, were excepted from the portion restored to the public domain. *Pelican*, *supra* at 445 (emphasis added).

In fact, as recently as 1962, this Court again attributed the same construction to the term in the same case that the United States has now cited in support of an alternative construction: *Seymour v. Superintendent*, 368 U.S. 351 (1962). M.U.S. at 12.

In *Seymour*, this Court was presented with another issue involving the same reservation that was discussed in *Pelican*. In relating the historical background of the Colville Reservation Justice Black succinctly stated:

In 1892, the size of this reservation was diminished when Congress passed an act . . . This Act did not, however, purport to affect the status of the remaining part of the reservation, since known as the 'South Half' or the 'diminished Colville Indian Reservation' . . . *Seymour*, *supra* at 354 (emphasis added).

In light of the specific holding of *Seymour*, there can be no doubt that diminished reservation also meant diminished reservation boundaries. If *Seymour* supports the construction of the term now advanced by the United States, that support certainly is not apparent in the opinion. See, M.U.S. at 12.

Secondly, as North Dakota also noted, there is the basic rule in Federal Indian Law, that terms of this nature should be construed in a non-technical sense. In short, they should be given their plain and ordinary meaning. In his *Handbook of Federal Indian Law*, the acknowledged expert in Federal Indian Law, Felix S. Cohen, based a similar conclusion on a number of decisions from this Court.

A somewhat different, although related, rule of treaty interpretation is to the effect that, since the wording in treaties was designed to be understood by the Indians, who often could not read and were not learned in the technical language, doubtful causes are resolved in a *non-technical way* as the Indians would have understood the language. Cohen, Felix S., *Handbook of Federal Indian Law*, at 37 (University of New Mexico Press).

Thus, the argument of the United States not only ignores the manner in which the term diminished reservation has been traditionally used by this Court, but it is also contrary to one of the most basic tenets in this area of the law.

Even more significant, however, is the fact that in addition to the foregoing reasons for the court below to reject the tendered construction of the United States, the Rosebud documents themselves contain evidence that conclusively establishes that in the Rosebud situation diminished reservation could only have meant diminished reservation boundaries. The opinion below specifically addresses this material in three separate instances. Nevertheless, the Memorandum of the United States refuses to even acknowledge the substance of the citations. *Rosebud*, *supra* at 99-100, 110-111,

111-112. In essence, the court noted therein that retrospectively, with the passage of each Rosebud Act, the remaining or diminished Rosebud Reservation was succinctly described in terms of decreasing acreage figures that necessarily excluded the entire acreage of the portion of the reservation previously affected — unallotted and allotted land alike. For example, prior to the 1910 Act, the House Report stated:

There will still be left a reservation containing about 1,000,000 acres, and as the Indians have all been allotted there is no occasion for continuing a reservation larger than it will be when Mellette County is disposed of. H.R. Rep. No. 429, 61st Cong., 2d Sess. 2 (1910).

As a result, after the passage of the 1910 Act, the diminished reservation was specifically stated to contain the precise acreage lying within the boundaries of Todd County. Thus, in addition to the "former reservation" and "heretofore a part of the reservation" terminology which was contemporaneously used in later Rosebud statutes to describe the area affected, the Rosebud documents do contain the basis for the proper construction of the term diminished Rosebud Reservation.⁵

Moreover, the Todd County documents set forth in detail in the Brief in Opposition at 32-35 unequivocally confirm this fact:

Inspector McLaughlin. I fully appreciate your feelings on this matter, knowing that *your reservation* which was a very large one a few years ago is *now reduced to the limits of Todd County*, . . . R. A. App. III, Doc. 37 at 14-15 (emphasis added).

The diminished reservation of the Rosebud Indians is now embraced in Todd County, South Dakota . . .
In the past eight years the Rosebud Indians have

⁵See, A. App. II, Doc. No. 2 at 2, 3, wherein the Commissioner of Indian Affairs also explained "diminished" in unequivocal terms.

consented to the opening of fully three-fourths of their original reservation, that is, Gregory County in 1904, Tripp County in 1909, and Mellette County, recently appraised and registered for and opened to entry April first next. *With the diminished reservation of the Rosebud Indians being now only one-fourth of this area eight years ago . . .* While the Rosebud Indians, whose reservation adjoins the Pine Ridge Indian Reservation on the east, have had their reservation *diminished* in the past eight years to *one-fourth of its original area*. They [the Rosebud Indians] *having so commendably consented to each of the three cessions of their reservation in the past eight years*. R. A. App. III, Doc. 38 at 4, 5, 6 (emphasis added).

The Secretary of the Interior. For the information of your committee, however, it may be pointed out that by successive openings within the past few years *this reservation has been successively reduced to less than one-fourth of its original area*. Gregory County was opened in 1904 under the provisions of the Act of April 23, 1904, (33 Stat. L. 254), Tripp County, in 1908, under the act of March 2, 1907, (34 Stat. L. 1230); and Mellette County will be opened during the present year under the act of May 30, 1910 (36 Stat. L. 448), the President's proclamation therefor having been issued on June 29, 1911.

It may be said that upward of 7,000 Indians within this reservation have previously been allotted approximately 1,679,000 acres of land, of which 636,300 acres fall *within Todd County — the diminished reservation*. R. A. App. III, Doc. 39 at 4 (emphasis added).

By successive openings within the past few years their reservation has been reduced to less than one-fourth of its original area. This leaves within the diminished reservation at this time the lands in Todd County only. Letter from the Secretary of the Interior to Senator Gamble (emphasis added).

In this light, it is not difficult to understand the rationale of the court below on this point. The only additional authority

other than a request for a "recognition of the obvious" (M.U.S. at 12) that the United States has offered this Court to support an alternative construction is a citation to *Seymour* which, on its face, would lead one to the opposite conclusion. In *Mattz*, this Court did not use the term diminished reservation or address the question. M.U.S. at 12.

In short, the alternative construction of diminished reservation now offered by the United States is not persuasive. Even the United States must recognize this fact to a certain extent. Consistently inconsistent, in 1973, the United States supported the position of the Respondents — diminished reservation meant diminished reservation boundaries. Brief of United States, *Amicus Curiae* at 4-7, *United States ex rel. Condon v. Erickson*, 478 F.2d 684 (C.A. 8, 1973).⁶

2. The 1934 Indian Reorganization Act. Another major argument that the United States advances as a reason for its disagreement with the conclusion of the court below is founded on a 1934 Departmental Opinion issued pursuant to the 1934 Indian Reorganization Act. Act of June 18, 1934, (48 Stat. 984), 54 I.D. 559 (1934), M.U.S. at 8, 19-21. Apart from the fact that the Departmental Opinion is based upon a congressional enactment 24 years removed from the language, legislative history and surrounding circumstances of the last Rosebud Act in question (the 1934 Indian Reorganization Act), at a time when it is acknowledged that the philosophy of Congress was no longer in accord with the philosophy of Section 5 of the General Allotment Act of 1887 and the special surplus land statutes enacted pursuant thereto, there are other and more significant reasons why Respondents cannot share the United States' view of the Opinion.

⁶Although the construction of the term was not in issue in *DeCoteau*, because the Act in *DeCoteau* affected the entire reservation, it is significant that, at the time of the briefing, even the United States consistently used the term diminished reservation in the context of diminished reservation boundaries. For example, see B.U.S. at 16, 27, set forth *supra* at 6, 7.

In the first place, a fair reading of the Opinion most certainly does not support the bald assertion of the United States that in 1934 the Department "decided in a formal opinion (54 I.D. 559) that this type of statute does not terminate the reservation status." M.U.S. at 8. The purpose of the Opinion, as stated in the Opinion, was simply to respond to a general directive in the 1934 Indian Reorganization Act to temporarily withdraw certain "remaining surplus lands of any Indian reservation *heretofore* opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public land laws of the United States" from further disposition by public entry, sale or otherwise. Act of June 18, 1934, *supra* (emphasis added). The temporary withdrawal was necessary to insure that restoration to tribal ownership at a later date would at least be possible. 54 I.D. at 561 (1934).

In the Opinion, a decision was made to include within the withdrawal only those lands "the proceeds of which, if sold, would be deposited in the Treasury of the United States for the benefit of the Indians." 54 I.D. at 563 (1934). In other words, the withdrawal was to be limited to those remaining surplus lands of reservations *heretofore* opened only by surplus land statutes in which the manner of payment was provided for in the uncertain-sum-in-trust arrangement. The basis for this distinction is also stated in the Opinion.

It can safely be said that it would not be *to the interest of the public* to restore to the Indians all undisposed of public lands that at one time were in Indian ownership but afterwards became the property of the United States by outright cessions from the Indian owners, [*DeCoteau*] because, as stated above, such action would mean the withdrawal in many States of all lands now available for entry as public domain. Such action undoubtedly would raise strong opposition in the various localities affected and have an undesirable bearing on the new Indian legislation. 54 I.D. 559, 560 (1934).

Thus, the aspect of the uncertain-sum-in-trust arrangement in issue here clearly did not play any part in the decision. But for the "interest of the public," the Opinion could have included the remaining surplus lands of any reservation *heretofore* opened that had ever been created in the United States including the original Lake Traverse Reservation in issue in *DeCoteau*.

In this respect, as this Court noted in a similar situation at oral argument in *DeCoteau*, it would be begging the question to argue that any reservation included in a list of "reservations *heretofore* opened" must necessarily exist as originally defined. The proper construction of the term "opened" in the *Rosebud* context is just as much at issue here as it was in *DeCoteau*.⁷

Secondly, although Respondents are clearly not in a position to verify the current and accepted jurisdictional history of each of the thirty statutes listed in the Opinion, certain other deficiencies in the position of the United States are also readily apparent. For example, included in the list in the Opinion is the Uintah and Ouray Reservation and the Act of March 27, 1902, 32 Stat. 263. This Act, which placed the Uintah and Ouray Reservation in the "*heretofore opened*" reservation status *on its face* directed that "all the unallotted lands within said reservation *shall be restored to the public domain*." Act, *supra* (emphasis added). *Mattz, supra* at 504, N. 22. The language and the jurisdictional history of other "*heretofore opened*" reservations in the same list in Colorado, South Dakota, and Wyoming are equally clear. In 1934, at least certain of these remaining surplus lands were not then within the present boundaries of any reservation. At the same time, the opposite might be true in other instances listed

⁷ The documents set forth in the *DeCoteau* opinion repeatedly refer to the Act of disestablishment in *DeCoteau* simply as "the opening of the reservation." *DeCoteau, supra* at 431, 434, 440, 441, 442.

therein, but this is not the point. As reliable indicia of the issue presented, the 1934 Indian Reorganization Act and the Departmental Opinion issued pursuant thereto will not suffice. Significantly, in a subsequent opinion which the Memorandum neglected to cite, the Department *formally* confirmed this fact. 56 I.D. 30 (1938).

Four years after the Department issued the temporary withdrawal opinion, the Secretary of Interior, at the instance of the Commissioner of Indian Affairs, requested a more formal opinion on the status of the remaining surplus lands of the "heretofore opened" Ute Reservation ceded in 1880 which was also included in the initial list. In this opinion, the Acting Solicitor laid bare the current position of the United States:

In my judgment, even if the reservation of the Confederated Bands of Utes were held no longer to exist, that fact alone would not negative the application of section 3 of the Indian Reorganization Act to the remaining undisposed of lands of that reservation. The phrase "of any Indian reservation" must be used in section 3 to describe the character and location of the lands *at the time they were opened* to disposal under the public land laws. The lands which may be restored to tribal ownership must be lands which were part of any Indian reservation, not of any forest or military reservation or of any other class of lands. Section 3 cannot mean that the lands must *now* have the character of Indian reservation lands, *as they are not reservation lands* but lands capable of being restored to reservation status under the Indian Reorganization Act. *Nor can section 3 mean that the lands must be located within the geographical limits of an Indian reservation.* 56 I.D. 330, 333 (1938) (emphasis added).

Therefore, in 1938 even the Department made clear that neither the 1934 Indian Reorganization Act nor any of the restoration orders issued pursuant to it had anything to do

with reservation boundaries *per se* or the issue that is now before this Court in the instant case.

The United States has not cited and Respondents are not aware of any specific restoration order for the area affected by the Rosebud Acts in issue. In light of the 1938 Opinion, however, no one would have been surprised had such a Rosebud order addressed a Rosebud restoration in the same terms that another order affecting another "heretofore opened" reservation in South Dakota, which was also included in the initial 1934 list, did address a subsequent restoration:

NOW, THEREFORE, by virtue of the authority vested in the Secretary of the Interior by Sections 3 and 7 of the Act of June 18, 1934 (48 Stat. 984), I hereby find that restoration to tribal ownership of all lands which are now, or may hereafter be, classified as undisposed-of surplus opened lands within the area above described, being within the *boundaries of the former Cheyenne River Reservation*, will be in public interest, and they are hereby restored to tribal ownership for the use and benefit of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota, and the same are added to and made a part of the existing Reservation, subject to any valid existing rights. Restoration Order of Oscar L. Chapman, Assistant Secretary of the Interior, June 12, 1941 (emphasis added).

In short, the argument of the United States that the 1934 Opinion can constitute a valid basis upon which to question the conclusions of the courts below is not persuasive.

CONCLUSION

For the reasons set forth above, the Petition for Certiorari should be denied.

Respectfully submitted,

William J. Janklow
Attorney General for South Dakota

William F. Day, Jr.
Attorney for the Four Counties

Tom D. Tobin
Special Assistant Attorney General

Attorneys for Respondents

May, 1976

MOTION FILED

NOV 24 1975

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,
Respondents.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE
AND
BRIEF AMICUS CURIAE OF
ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.
AND THE
OGLALA SIOUX TRIBE
OF THE PINE RIDGE RESERVATION, SOUTH DAKOTA
IN SUPPORT OF THE PETITION FOR CERTIORARI

ARTHUR LAZARUS, JR.
600 New Hampshire Ave., N.W.
Washington, D.C. 20037
Attorney for Amici Curiae.

Of Counsel:

W. RICHARD WEST, JR.

(i)

SUBJECT MATTER INDEX TO BRIEF

Page

INTEREST OF AMICI CURIAE	1
STATEMENT OF THE CASE	4
REASON FOR GRANTING THE WRIT	11
The Decision Below Contravenes an Established Line of Cases in Which this Court has Held that Statutes Unilaterally Enacted by Congress Opening an Indian Reservation to Settlement by Non- Indians Do Not Disestablish the Reservation	11
CONCLUSION	21

TABLE OF AUTHORITIES

MOTION

Cases:

Affiliated Ute Citizens v. United States, 406 U.S. 128 (1972)	2
DeCoteau v. District County Court, 420 U.S. 425 (1975)	2
Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973)	2
Puyallup Tribe v. Dept. of Game, 391 U.S. 392 (1968)	2
United States ex rel. Cook v. Parkinson, No. 75- 1306 (8 Cir. 1975).	3
Warren Trading Post Co. v. Arizona State Tax Comm'n, 380 U.S. 685 (1965).	2

Statutes:

Acts of April 23, 1904, March 2, 1907, May 30, 1910	3
Act of May 20, 1910, ch. 257, 36 Stat. 440	2, 3

(ii)

BRIEF

Page

Cases:

Ash Sheep Co. v. United States, 252 U.S. 159 (1920)	21
Carpenter v. Shaw, 280 U.S. 363 (1930)	19
Choate v. Trapp, 224 U.S. 665 (1912)	19
DeCoteau v. District County Court, 420 U.S. 425 (1975)	15, 16, 17, 18, 19, 20, 21
Lone Wolf v. Hitchcock, 187 U.S. 553 (1903)	8
Mattz v. Arnett, 412 U.S. 481 (1973)	13, 15, 17, 18, 19
Rosebud Sioux Tribe v. Kneip, No. Civ. 72-3030 (D.C. S.D. 1974)	11
Rosebud Sioux Tribe v. Kneip, No. 74-1211 (8th Cir. 1975)	11, 18, 19, 20
Seymour v. Superintendent, 368 U.S. 351 (1966)	11, 12, 15, 17, 18, 19
Sioux Tribe v. United, States, 97 Ct. Cl. 613 (1942)	5
Sioux Tribe v. United States, 500 F.2d 458 (Ct. Cl. 1974)	4
Squire v. Capoman, 351 U.S. 1 (1956)	19
United States v. Celestine, 215 U.S. 278 (1909)	15, 19
United States ex. rel. Condon v. Erickson, 478 F.2d 684 (8th Cir. 1973)	12
United States v. Kagama, 118 U.S. 375 (1886)	3
Udall v. Tallman, 380 U.S. 1 (1965)	3

Statutes:

Act of February 28, 1877, ch. 72, 19 Stat. 254	5
Act of March 2, 1889, ch. 405, 25 Stat. 888	5, 6, 10
Act of February 20, 1904, ch. 161, 33 Stat. 46	3
Act of April 23, 1904, ch. 1484, 33 Stat. 254	3, 6, 20
Act of April 23, 1904, ch. 1495, 33 Stat. 302	3
Act of April 27, 1904, ch. 1620, 33 Stat. 319	3
Act of April 27, 1904, ch. 1624, 33 Stat. 352	3

(iii)

Brief, Statutes, continued:

Page

Act of April 28, 1904, ch. 1820, 33 Stat. 567	3
Act of December 21, 1904, ch. 22, 33 Stat. 595	3
Act of March 3, 1905, ch. 1452, 35 Stat. 458	3
Act of April 21, 1906, ch. 1645, 34 Stat. 124	3
Act of June 21, 1906, ch. 3504, 34 Stat. 334	3
Act of March 2, 1907, ch. 2285, 34 Stat. 1035	2
Act of March 2, 1907, ch. 2536, 34 Stat. 1230	2, 6, 9
Act of May 21, 1908, ch. 218, 35 Stat. 460	14
Act of May 29, 1908, ch. 217, 35 Stat. 458	2
Act of May 29, 1908, ch. 218, 35 Stat. 460	2
Act of May 30, 1908, ch. 237, 35 Stat. 558	2
Act of May 27, 1910, ch. 257, 36 Stat. 440	2
Act of May 30, 1910, ch. 260, 36 Stat. 448	2, 6, 10

Congressional Materials:

S. REPT. NO. 662, 57th Cong., 1st Sess. (1902)	7
H. REPT. No. 3271, 57th Cong., 2d Sess. (1903)	7
S. REPT. NO. 651, 58th Cong., 2d Sess. (1904)	8, 20
S. REPT. NO. 887, 60th Cong., 2d Sess. (1909)	10
H. REPT. NO. 2099, 57th Cong., 1st Sess. (1902)	7
H. REPT. NO. 3839, 57th Cong., 2d Sess. (1903)	7, 8
H. REPT. NO. 443, 58th Cong., 2d Sess. (1904)	8, 20
H. REPT. NO. 7613, 59th Cong., 2d Sess. (1907)	9
S. 7390, 57th Cong., 2d Sess. (1903)	7
S. 7379, 60th Cong., 2d Sess. (1908)	9
H.R. 17467, 57th Cong., 2d Sess. (1903)	7
36 Cong. Rec. 2748 (1903)	8
41 Cong. Rec. 3182 (1907)	9

Treaties:

Treaty of April 29, 1868, 15 Stat. 635	4
--	---

(iv)

<i>Other:</i>	<u>Page</u>
Agreement of December 12, 1889, 26 Stat. 989	16
Agreement of September 14, 1901, 33 Stat. 254	6, 7

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,

Respondents.

MOTION FOR LEAVE TO FILE BRIEF
AS AMICI CURIAE

Pursuant to Rule 42(3), the Association on American Indian Affairs, Inc., a tax-exempt organization having its principal office at 432 Park Avenue South, New York, New York 10016, and the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, move the Court for leave to file the attached brief *amici curiae* in support of the Petition for Certiorari in the above-captioned case. The petitioner Rosebud Sioux Tribe has consented to the filing of this brief; the respondents, the Honorable Richard Kneip, et al., have refused so to consent.

The Association on American Indian Affairs, Inc. is a nonprofit membership corporation organized under the

laws of the State of New York for the purpose of protecting the rights and improving the welfare of American Indians. The Association is the largest Indian-interest organization in the United States, and is nationwide in scope, with a membership of 50,000 that consists of both Indians and non-Indians. The Association frequently has participated in leading cases involving issues of Indian law before the federal and state courts, including the filing of a brief with this Court in *De Coteau v. District County Court*, 420 U.S. 425, 43 L.Ed.2d 300 (1975), and the filing of *amicus curiae* briefs in *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 36 L.Ed.2d 114 (1973), *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 31 L.Ed.2d 741 (1972), *Puyallup Tribe v. Dept. of Game*, 391 U.S. 392, 20 L.Ed.2d 689 (1968), and *Warren Trading Post Co. v. Arizona State Tax Comm'n*, 380 U.S. 685, 14 L.Ed.2d 165 (1965).

The Oglala Sioux Tribe is a federally recognized Indian Tribe which governs its members on a reservation that in part has been opened under a federal statute to settlement by non-Indians. See Act of May 10, 1910, ch. 257, 36 Stat. 440. Without exception those areas previously opened to settlement have been recognized and consistently administered by the federal government and the Tribe as part of the Pine Ridge Indian Reservation.

This case presents a general issue of great and continuing concern to the Association, to the Oglala Sioux Tribe, and to all American Indians—whether certain so-called “surplus lands” statutes which were unilaterally enacted by Congress at the turn of the twentieth century without the consent of the affected Indian tribes, and which opened all or parts of the tribes’ reservations to settlement by non-Indians, effected a termination of reservation status. In the present case, the

Association and the Oglala Sioux Tribe are concerned with this broad question in a specific context—namely, whether the Acts of April 23, 1904, March 2, 1907, and May 30, 1910, which were enacted without the consent of petitioner, and in which Congress explicitly declared that the United States was not purchasing the lands opened to settlement, effected a termination of the reservation status of three-fourths of the Rosebud Indian Reservation. Moreover, in reliance upon its decision in this case, the court below recently has held that the Act of May 10, 1910, *supra*, which opened the Bennett County portion of the Pine Ridge Indian Reservation to settlement, also effected a termination of reservation status. See *United States ex rel. Cook v. Parkinson*, No. 75-1306 (8 Cir. 1975) (slip opinion of October 29, 1975), at 7.

The Association and the Oglala Sioux Tribe submit the attached brief in order to assist the Court in recognizing that the decision of the United States Court of Appeals for the Eighth Circuit clearly contravenes the precedents established by this Court which support the proposition that statutes unilaterally enacted by Congress opening an Indian reservation to settlement by non-Indians do not disestablish the reservation. Since the immediate parties are not likely to address the specific points which the Association and the Tribe propose to discuss, and since such discussion thus may be helpful to the Court, the Association and the Tribe request that their motion for leave to file the attached brief as *amici curiae* be granted.

Respectfully submitted,

ARTHUR LAZARUS, JR.

Of Counsel:

W. RICHARD WEST, JR.

600 New Hampshire Ave., N.W.
Washington, D.C. 20037

Attorney for Amici Curiae.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,

Respondents.

BRIEF AMICUS CURIAE OF
ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.
AND THE
OGLALA SIOUX TRIBE OF THE
PINE RIDGE RESERVATION, SOUTH DAKOTA
IN SUPPORT OF THE PETITION FOR CERTIORARI

INTEREST OF AMICI CURIAE

The Association on American Indian Affairs, Inc. is a nonprofit membership corporation organized under the laws of the State of New York for the purpose of protecting the rights and improving the welfare of American Indians. The Association is the largest Indian-interest organization in the United States, and is nation-

wide in scope, with a membership of 50,000 that consists of both Indians and non-Indians. The Oglala Sioux Tribe is a federally recognized Indian tribe which governs the Pine Ridge Indian Reservation in the State of South Dakota.

This case presents a question of great and continuing concern to the Association, and to the Oglala Sioux Tribe and all other American Indians—whether certain so-called “surplus lands” statutes which were unilaterally enacted by Congress at the turn of the twentieth century without the consent of the affected Indian tribes and which opened all or parts of the tribes’ reservations to settlement by non-Indians, effected a termination of reservation status. In the present case, the Association and the Tribe are concerned with this broad issue in a specific context—namely, whether the Acts of April 23, 1904, March 2, 1907, and May 30, 1910, which were enacted without the consent of petitioner, and in which Congress explicitly declared that the United States was not purchasing the lands opened to settlement, effected a termination of the reservation status of three-fourths of the Rosebud Indian Reservation.

In terms of its potential impact on American Indians, the importance of this question can hardly be overstated. At the present time seventeen Indian reservations with a population of approximately 69,000 are subject to acts of Congress which unilaterally opened certain reservation lands to settlement by non-Indians.¹ Without exception

¹See Act of May 30, 1910, ch. 260, 36 Stat. 448; Act of May 27, 1910, ch. 257, 36 Stat. 440; Act of May 30, 1908, ch. 237, 35 Stat. 558; Act of May 29, 1908, ch. 218, 35 Stat. 460; Act of May 29, 1908, ch. 217, 35 Stat. 458; Act of March 2, 1907, ch. 2536, 34 Stat. 1230; Act of March 2, 1907, ch. 2285, 34 Stat. 1035; Act

[footnote continued]

the areas opened to such settlement nevertheless have been recognized as Indian country by Congress and have been consistently administered as reservation lands by the Department of the Interior.²

If the Court of Appeals’ decision in this case is upheld, the ultimate effect of the holding on Indian tribes and their members will be nothing short of a political and cultural revolution. The exclusive jurisdiction of the federal government over Indians who reside on reservation areas which have been opened by Congress to settlement by non-Indians will be terminated. Furthermore, the authority of Indian tribes to exercise traditional powers of self-government over a significant part of their membership will be severely curtailed or entirely eliminated. Finally, for jurisdictional purposes, Indians residing on reservation lands opened to settlement will be left to the mercy of the States, which on a previous occasion this Court quite aptly has characterized as “their deadliest enemies.” *United States v. Kagama*, 118 U.S. 375, 384, 30 L.Ed.228, 231 (1886).

The Association and the Oglala Sioux Tribe submit the following brief in order to assist the Court in recognizing that the decision of the United States Court of Appeals

of June 21, 1906, ch. 3504, 34 Stat. 334; Act of April 21, 1906, ch. 1645, 34 Stat. 124; Act of March 3, 1905, ch. 1452, 35 Stat. 458; Act of December 21, 1904, ch. 22, 33 Stat. 595; Act of April 28, 1904, ch. 1820, 33 Stat. 567; Act of April 27, 1904, ch. 1624, 33 Stat. 352; Act of April 27, 1904, ch. 1620, 33 Stat. 319; Act of April 23, 1904, ch. 1495, 33 Stat. 302; Act of April 23, 1904, ch. 1484, 33 Stat. 254; Act of February 20, 1904, ch. 161, 33 Stat. 46.

²The Secretary of the Interior’s determination that such areas retain their reservation status is entitled to “great deference.” See *Udall v. Tallman*, 380 U.S. 1, 16, 13 L.Ed.2d 616, 625 (1965).

for the Eighth Circuit clearly contravenes the long line of precedents established by this Court which support the proposition that statutes unilaterally enacted by Congress opening an Indian reservation to settlement by non-Indians do not disestablish the reservation.

STATEMENT OF THE CASE

Petitioner, the Rosebud Sioux Tribe, is a constituent part of the Sioux Nation, which, as early as 1851, was recognized by the United States as the owner of a vast domain in what are now the States of North Dakota, South Dakota, Nebraska, Montana, and Wyoming. *See Sioux Tribe v. United States*, 500 F.2d 458, 460 (Ct. Cl. 1974). Pursuant to the provisions of a treaty entered into on April 29, 1868, the United States "set apart for the absolute and undisturbed use and occupation" of the Sioux Nation the Great Sioux Reservation, which embraced approximately 28 million acres of land west of the Missouri River in the Territory of Dakota. Treaty of April 29, 1868, 15 Stat. 635, 636. Article II of the 1868 Treaty expressly guaranteed that no persons except authorized officials of the federal government would be "permitted to pass over, settle upon or reside" on the Reservation. Treaty of April 29, 1868, 15 Stat. at 636. Finally, the 1868 Treaty provided in Article XII that a sale of any part of the Reservation would not be "of any validity" absent the written consent of three-fourths of the male adults of the Sioux Nation. Treaty of April 29, 1868, 15 Stat. at 639.

During the next forty years the United States repeatedly demonstrated a singular inability to abide by the promises made to the Sioux Nation in 1868. Within a decade after the 1868 Treaty became effective, non-Indians initiated a persistent and ultimately effective

campaign to convince the federal government to reduce further the Sioux Nation's territory. In capitulation to such pressures, the United States in 1877 acquired unilaterally and without the Sioux Nation's consent approximately 7.5 million acres of the Black Hills portion of the Reservation, which contained substantial gold deposits. *See* Act of February 28, 1877, ch. 72, 19 Stat. 254; *Sioux Tribe v. United States*, 97 Ct. Cl. 613, 655-56 (1942).

In 1889 Congress enacted legislation which effected yet another reduction in the Sioux Nation's reservation. Pursuant to the Act of March 2, 1889, the provisions of which had been assented to by three-fourths of the male adults of the Sioux Nation, the United States restored half of the Great Sioux Reservation to the public domain, and divided the balance into six separate reservations. *See* Act of March 2, 1889, ch. 405, § § 1-6, 21, 25 Stat. 888, 889-90, 897-98. Section 2 of the 1889 Act established a permanent reservation for the Rosebud Sioux Tribe which included all or parts of the counties of Todd, Mellette, Tripp, and Gregory in the State of South Dakota. *See* Act of March 2, 1889, ch. 405, § 2, 25 Stat. at 888. Section 19 extended to the reservation thus created all provisions of the 1868 Treaty not in conflict with the 1889 Act, including the promise of absolute and undisturbed use and occupancy, the assurance that all outsiders except for authorized federal employees would be barred, and the requirement that no reservation land would be sold without the written consent of three-fourths of the male adults. *See* Act of March 2, 1889, ch. 405, § 19, 25 Stat. at 896.

During the first decade of the twentieth century, Congress enacted unilaterally and without the consent of the Rosebud Sioux Tribe three so-called "surplus" land

statutes which opened large parts of the Rosebud Reservation to settlement by non-Indians. *See* Act of May 30, 1910, ch. 260, 36 Stat. 448; Act of March 2, 1907, ch. 2536, 34 Stat. 1230; Act of April 23, 1904, ch. 1484, 33 Stat. 254. These enactments were labeled "surplus land statutes" because they disposed of land which supposedly was not needed immediately for allotment to individual Indians, and which therefore was deemed by the federal government to be "surplus" to petitioner's needs. Pursuant to the provisions of all three statutes, parts of the Rosebud Reservation were made available to non-Indian settlers for sale, and the proceeds from such sales were credited to petitioner as they were received by the federal government. *See* Act of May 30, 1910, ch. 260, § 7, 36 Stat. at 451; Act of March 2, 1907, ch. 2536, § 5, 34 Stat. at 1231; Act of April 23, 1904, ch. 1484, 33 Stat. at 256.

The history of the three surplus land statutes affecting the Rosebud Indian Reservation actually commences in 1901 when the federal government dispatched a representative to the Rosebud Sioux Tribe to negotiate an agreement for the cession and sale of approximately 416,000 acres in the Gregory County portion of the reservation established by the 1889 Act. Subsequent negotiations resulted in an agreement pursuant to which petitioner did "... cede, surrender, grant, and convey to the United States all [its] claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota..." Agreement of September 14, 1901, 33 Stat. 254. In consideration of the Rosebud Sioux Tribe's cession of lands, the United States agreed to pay petitioner the sum of \$1,040,000. *See* Agreement of September 14, 1901, 33 Stat. 254.

Three-fourths of the male adults of the Tribe consented to the agreement. Agreement of September 14, 1901, 33 Stat. at 255.

Article VI of the 1901 Agreement required that it be ratified by Congress, and in 1902, therefore, bills were introduced in the Senate and the House of Representatives to effect ratification. The Senate bill, which, in addition to ratifying the Agreement, provided for free homesteads and the donation of school sections to the State of South Dakota, passed only after it had been objected to vigorously on the ground that public funds should not be used to purchase Indian land which in turn was to be given to homesteaders free of charge. *See generally* S. REPT. NO. 662, 57th Cong., 1st Sess. 1-2 (1902). The House of Representatives ultimately rejected both of the provisions added to the 1901 Agreement by the Senate. *See generally* H. REPT. NO. 2099, 57th Cong., 1st Sess. 1 (1902).

In response to opposition to the 1902 bills, legislation was proposed in 1903 which adopted the "surplus land" format, and provided that petitioner's reservation in Gregory County would be opened for settlement and sale with proceeds from such sales to be credited to the Tribe. *See* S. 7390, 57th Cong., 2d Sess. (1903); H.R. 17467, 57 Cong., 2d Sess. (1903). Although the preambles of the bills set forth the 1901 Agreement approved by petitioner, the "modified Agreement" which followed the enacting clause contained significant substantive changes that transformed the transaction from an outright sale of land for a sum certain into an arrangement pursuant to which the uncertain future proceeds from the sale of land would be expended for the benefit of petitioner as they were received by the United States. *See generally* S. REPT. NO. 3271, 57th Cong., 2d Sess. (1903); H. REPT.

NO. 3839, 57th Cong., 2d Sess. (1903). Both bills, however, did require that the consent of the Rosebud Sioux Tribe to the new statutory approach be obtained. The Senate passed the proposed legislation, but the House declined to act on it. 36 CONG. REC. 2748 (1903).

In the summer of 1903 the federal government sent a representative to the Rosebud Indian Reservation "...for the purpose of negotiating a new agreement...along the lines proposed in Senate Bill No. 7390..." Letter of June 30, 1903, from the Commissioner of Indian Affairs to James McLaughlin, at 1-2. Despite the considerable efforts of the United States' representative to obtain petitioner's acquiescence in such an approach, less than three-fourths of the Sioux Indians of the Rosebud Indian Reservation approved the surplus land format.

The federal government's failure to obtain the requisite consent for the agreement in no way dampened Congress' determination to enact a surplus land statute opening up petitioner's reservation in Gregory County to non-Indian settlement. In January and February, 1904, a committee in the House of Representatives reported out a new bill which employed the surplus land approach, but conspicuously omitted any requirement of consent by petitioner.³ See S. REPT. NO. 651, 58th Cong., 2d Sess. (1904); H. REPT. NO. 443, 58th Cong., 2d Sess. (1904). The proposed legislation became law on April 23, 1904.

³Congress' hand had been strengthened considerably in early 1903 by this Court's decision in *Lone Wolf v. Hitchcock*, 187 U.S. 553, 47 L.Ed.299 (1903). There the Court upheld the Constitutional validity of a federal statute which ratified an outright sale of Indian land for a sum certain—despite the fact the requisite three-fourths consent required by an earlier treaty had not been obtained.

In December, 1906, new bills were introduced for the purpose of opening to non-Indian settlement that part of petitioner's reservation which is located in Tripp County, South Dakota. Congress forewent action on the proposed legislation while a representative of the federal government again was dispatched to the Rosebud Indian Reservation to obtain petitioner's consent. 41 Cong. Rec. 3182 (1907). Despite the repeated efforts of the representative to obtain signatures approving the agreement, less than three-fourths of the male adults in fact agreed to Congress' offering. See H. REPT. NO. 7613, 59th Cong., 2d Sess. 7 (1907).

Although the United States and petitioner plainly had reached no understanding which complied with applicable consent requirements, the Secretary of the Interior nevertheless recommended legislation to ratify the "agreement". Letter of February 14, 1907, from E. A. Hitchcock, Secretary of the Interior, to Chairman of the House Committee on Indian Affairs, at 4. Congress, however, ignored the executive branch's advice, and promptly enacted a unilateral surplus land statute on March 2, 1907, to "...authorize the sale and disposition of [that] portion of the surplus or unallotted lands in the Rosebud Indian Reservation [located in Tripp County, South Dakota]." Act of March 2, 1907, ch. 2536, 34 Stat. 1230.

In 1908 yet a third surplus land bill was introduced in the Senate to authorize the sale of petitioner's unallotted lands located in Mellette County, South Dakota. See S. 7379, 60th Cong., 2d Sess. (1908). The Secretary of the Interior, while not requesting that the consent of petitioner be obtained, nevertheless recommended to Congress that it solicit "...the views of the Indians... before the bill is finally acted on..." S. REPT.

NO. 887, 60th Cong., 2d Sess. 3 (1909). The Senate Committee on Indian Affairs at first explicitly rejected the Secretary's suggestion because "...it would delay the consideration of the matter unduly..." S. REPT. NO. 887, 60th Cong., 2d Sess. 2 (1909). After the Senate failed to act on the proposed legislation, however, a representative of the federal government was instructed to visit the Rosebud Reservation not to obtain the consent of petitioner's members, but to "...take up with the Indians of the Pine Ridge and Rosebud Reservations the matter of opening parts of these reservations to settlement..." Proceedings of Councils held by Inspector McLaughlin with Indians of the Rosebud Indian Reservation, at 2 (April 21, 1909). Despite the repeated threats of the United States' representative that Congress would open Mellette County regardless of petitioner's views, members of the Rosebud Sioux Tribe steadfastly refused to be intimidated, and continued to oppose further sales of their lands. On May 30, 1910, Congress responded by enacting legislation which authorized the "...sale and disposition of a portion of the surplus and unallotted lands in Mellette [County] ... in the Rosebud Indian Reservation..." Act of May 30, 1910, ch. 260, 36 Stat. 448.

Pursuant to the provisions of 28 U.S.C. §2201, petitioner brought an action in the United States District Court for the District of South Dakota seeking a declaratory judgment that the 1904, 1907, and 1910 surplus land acts discussed above did not disestablish any part of the Rosebud Reservation as defined by the Act of March 2, 1889. In a judgment entered on February 15, 1974, the District Court decreed that the statutes "... did extinguish the reservation or 'Indian land' nature of the unallotted surplus lands in [Gregory, Tripp, and

Mellette Counties] by returning them to the public domain, and did diminish the geographical location of the boundaries of the Rosebud Sioux Reservation to coincide with the boundaries of Todd County, South Dakota." *Rosebud Sioux Tribe v. Kneip*, No. Civ. 72-3030 (D.C. S.D. 1974) (judgment entered on February 15, 1974). In an opinion handed down on July 16, 1975, the United States Court of Appeals for the Eighth Circuit upheld the decision of the District Court. *See Rosebud Sioux Tribe v. Kneip*, No. 74-1211 (8 Cir. 1975) (slip opinion of July 16, 1975).

REASON FOR GRANTING THE WRIT

THE DECISION BELOW CONTRAVENES AN ESTABLISHED LINE OF CASES IN WHICH THIS COURT HAS HELD THAT STATUTES UNILATERALLY ENACTED BY CONGRESS OPENING AN INDIAN RESERVATION TO SETTLEMENT BY NON-INDIANS DO NOT DISESTABLISH THE RESERVATION.

The decision rendered by the Court of Appeals conflicts with a long line of cases in which this Court has found repeatedly that surplus land statutes such as those involved here did not effect the termination of reservation status. In *Seymour v. Superintendent*, 368 U.S. 351, 7 L.Ed.2d 346 (1962), the Court addressed the question whether a statute enacted by Congress in 1906 diminished for purposes of exclusive federal jurisdiction the boundaries of the Colville Indian Reservation. *Id.* at 355, 7 L.Ed.2d at 349. The statute in question in the *Seymour* case authorized the sale of certain mineral interests and surplus lands of the Colville Indian Tribe, and differed in no important substantive detail from the Congressional enactments at issue in the present case.

After reviewing the 1906 legislation disposing of the Colville Tribe's surplus lands, the Court rejected respond-

ent's contention that the statute had effected a termination of reservation status. The Court emphasized that "[n]owhere in the . . . Act is there to be found any language . . . expressly vacating the South Half of the reservation and restoring the land to the public domain." *Id.* at 355, 7 L.Ed.2d at 349. Furthermore, considerable importance was attached to the fact that both Congress and the Department of the Interior repeatedly had indicated by their actions that they believed the reservation still to be in existence.⁴ *Id.* at 356, 7 L.Ed.2d at 350. Finally, the Court emphasized that the opening of an Indian reservation to settlement by non-Indians should not be interpreted to terminate it:

. . . [I]t seems clear that the purpose of the 1906 Act was neither to destroy the existence of the diminished Colville Indian Reservation nor to lessen federal responsibility for and jurisdiction over the Indians having tribal rights on that reservation. The Act did no more than open the way for non-Indian settlers to own land on the reservation in a manner which the Federal Government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards.⁵

⁴Since 1868 the Bureau of Indian Affairs of the Department of the Interior without exception has administered the areas in dispute in this case as part of the Rosebud Indian Reservation.

⁵In determining that the Colville Indian Reservation continued to have reservation status, the Court found "significant" the fact that the State of Washington had failed to fulfill the conditions necessary under federal law for assuming jurisdiction over the Colville Tribe. See *Seymour v. Superintendent*, 368 U.S. at 356 n. 12, 7 L.Ed.2d at 350 n. 12. For a decade and a half the United States provided the State of South Dakota with the opportunity to exercise jurisdiction over Indians on the Rosebud Indian Reservation—the lack of the Rosebud Sioux Tribe's consent notwithstanding. In 1961 the people of the State of South Dakota rejected by referendum the attempt of the state legislature to assume such jurisdiction. See *United States ex rel. Condon v. Erickson*, 478 F.2d 684, 685 n. 1 (8 Cir. 1973).

Id. at 356, 7 L.Ed.2d at 349.

In *Mattz v. Arnett*, 412 U.S. 481, 37 L.Ed.2d 92 (1973), this Court reached an identical result on similar facts. There the "... narrow question was whether the Klamath Indian Reservation in northern California was terminated by Act of Congress [in 1892] or whether it remains 'Indian country' . . ." *Id.* at 483, 37 L.Ed.2d at 94. The Congressional enactment at issue in the *Mattz* case opened certain lands belonging to the Klamath Tribe for sale to non-Indians, and further provided that whatever proceeds were derived from such sales would be placed in a fund maintained by the Secretary of the Interior for the maintenance and education of members of the Tribe. *Id.* at 495, 37 L.Ed.2d at 101. That the legislation in the *Mattz* case was a surplus land act identical in all substantive respects to the statutes at issue in this case cannot reasonably be doubted.

In the *Mattz* opinion this Court not only rejected the contention that the opening of an Indian reservation to settlement by non-Indians effected its disestablishment, but, more important, explicitly affirmed the proposition that such action by Congress is fully compatible with continued reservation status:

The meaning of . . . terms [opening Indian land to homsteading] is to be ascertained from the overview of the earlier General Allotment Act of 1887. . . . That Act permitted the President to make allotments of reservation lands and, with tribal consent, to sell surplus lands. Its policy was to continue the reservation system and the trust status of Indian lands, but to allot tracts to individual Indians for agriculture and grazing. When all the lands had been allotted and the trust expired, the reservation could be abolished. Unallotted lands were made available

to non-Indians with the purpose, in part, of promoting interaction between the races and of encouraging Indians to adopt white ways.... Under the 1887 Act, however, the President was not required to open reservation land... he merely had the discretion to do so.

In view of the discretionary nature of this presidential power, Congress occasionally enacted special legislation in order to assure that a particular reservation was in fact opened....⁶ [Emphasis added.]

Id. at 496-97, 37 L.Ed.2d at 101-02. Thus, in light of the legislative purpose of the General Allotment Act of 1887, surplus land statutes opening Indian reservations to settlement by non-Indians may be characterized as a step toward the ultimate disestablishment of such reservations, but they should not be construed as in themselves effecting the termination of reservation status.

In the *Mattz* case the Court also emphasized that a "... congressional determination to terminate must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history." *Id.* at 505, 37 L.Ed.2d at 106. After reviewing the statute in question and its legislative history, the Court concluded that disestablishment had not been intended:

⁶The Court cited the Act of May 21, 1908, ch. 218, 35 Stat. 460, as an example of "special legislation" which opened parts of an Indian reservation to settlement, but which did not terminate reservation status. See *Mattz v. Arnett*, 412 U.S. at 497 n. 19, 37 L.Ed.2d at 102 n. 19. The 1908 Act, which authorized the sale of certain lands within the Cheyenne River Indian Reservation and the Standing Rock Indian Reservation to non-Indian settlers, is virtually identical in substance to the surplus land statutes at issue in this case.

... [C]lear termination language was not employed in the 1892 Act. This being so, we are not inclined to infer an intent to terminate the reservation."

Id. at 504, 37 L.Ed.2d at 106. Accord, *United States v. Celestine*, 215 U.S. 278, 285, 54 L.Ed.195, 197 (1909).

In its recent decision in *De Coteau v. District County Court*, 420 U.S. 425, 43 L.Ed.2d 300 (1975), this Court again has affirmed the legal principles established in the *Seymour* and *Mattz* cases. The Court addressed in the *De Coteau* case the "... single question whether the Lake Traverse Indian Reservation in South Dakota, created by an 1867 treaty between the United States and the Sisseton and Wahpeton bands of Sioux Indians, was terminated, and returned to the public domain, by the Act of March 3, 1891...." *Id.* at 426-7, 43 L.Ed.2d at 304.

The Court began its analysis by reiterating a number of the legal rules which are employed in determining whether an Indian reservation has been disestablished. The Court observed that it "... does not lightly conclude that an Indian reservation has been terminated." *Id.* at 444, 43 L.Ed.2d at 314. It further emphasized that the "... congressional intent [to disestablish a reservation] must be clear, to overcome 'the general rule that "doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith" '." *Id.* at 444, 43 L.Ed.2d at 314. Finally, the Court "... stressed that reservation status may survive the mere opening of a reservation to settlement, even when the moneys paid for the land by the settlers are placed in trust by the Government for the Indians' benefit." *Id.* at 444, 43 L.Ed.2d at 314.

The Court, however, found that the statute at issue in the *De Coteau* case⁷ evinced a clear and undeniable intent to disestablish the Lake Traverse Indian Reservation. The negotiations between the United States and the Sisseton and Wahpeton bands of the Sioux showed that the "... Indians were willing to convey to the Government, for a sum certain, all of their interest in all of their unallotted lands." *Id.* at 445, 43 L.Ed.2d at 314. Furthermore, the 1891 Act was passed at the same time Congress enacted other statutes which, by the admission of all parties before the Court, had effected a termination of reservation status:

That the lands ceded in the other agreements were returned to the public domain, stripped of reservation status, can hardly be questioned, and every party here acknowledges as much. The sponsors of the legislation stated repeatedly that the ratified agreements would return the ceded lands to the 'public domain.'

Id. at 446, 43 L.Ed.2d at 315. Thus, the Court concluded that the 1891 Act had disestablished the Lake Traverse Indian Reservation.

⁷The enactment was not a unilateral surplus lands statute, but instead effected the ratification of a cession agreement to which the Sisseton and Wahpeton Sioux had consented. Under article I of the instrument the band agreed to "... cede, sell, relinquish, and convey to the United States all their claim, right, title and interest in and to all the unallotted lands within the limits of the reservation set apart to said bands of Indians. ..." Agreement of December 12, 1889, 26 Stat. 989, 1036. Furthermore, article II of the agreement provided that "[i]n consideration of the lands ceded, sold, relinquished, and conveyed as aforesaid, the United States stipulates and agrees to pay ... the sum of two dollars and fifty cents per acre. ..." Agreement of December 12, 1889, 26 Stat. at 1036.

In reaching this conclusion, however, the Court took considerable pains to emphasize that the case before it differed markedly from the facts involved in the *Seymour* and *Mattz* decisions, and that the legal principles established and affirmed in the latter cases still represented valid law. The Court offered the following analysis with respect to the *Mattz* case:

In *Mattz*, [we] held that an 1892 Act of Congress did not terminate the Klamath River Reservation in northern California. That Act declared the reservation lands 'subject to settlement, entry, and purchase' under the homestead laws of the United States, empowered the Secretary of the Interior to allot tracts to tribal members, and provided that any proceeds of land sales to settlers should be placed in a fund for the tribe's benefit. The 1892 statute could be considered a termination provision only if continued reservation status was inconsistent with the mere opening of lands to settlement, and such is not the case. ... *But the 1891 Act before us is a very different instrument. It is not a unilateral action by Congress but the ratification of a previously negotiated agreement, to which a tribal majority consented. The 1891 Act does not merely open lands to settlement; it also appropriates and vests in the tribe a sum certain—\$2.50 per acre—in payment for the express cession and relinquishment of 'all' of the Tribe's 'claim, right, title and interest' in the unallotted lands. The statute in Mattz, by contrast, benefited the tribe only indirectly, by establishing a fund dependent on uncertain future sales of its lands to settlers. [Emphasis added.]*

Id. at 447-8, 43 L.Ed.2d at 316.

The Court distinguished the *Seymour* case in similar fashion:

In *Seymour*, the Court held that a 1906 Act of Congress did not terminate the southern portion of the Colville Indian Reservation in Washington. *Like that in question in Mattz, this Act was unilateral in character; like that in question in Mattz, it merely opened reservation land to settlement and provided that the uncertain future proceeds of settler purchases should be applied to the Indians' benefit. The Seymour Court was not confronted with a straightforward agreement ceding lands to the Government for a sum certain. . . .*

Thus, in finding a termination of the Lake Traverse reservation, we are not departing from, but following and reaffirming, the guiding principles of *Mattz* and *Seymour*. [Emphasis added.]

Id. at 448-9, 43 L.Ed.2d at 316.

The legal principles clearly articulated by this Court in the *Seymour*, *Mattz*, and *De Coteau* cases plainly require the conclusion that the Court of Appeals erred in holding below that the 1904, 1907, and 1910 surplus land acts disestablished petitioner's reservation in Gregory, Tripp, and Mellette Counties in South Dakota. Nowhere in any of the three surplus land statutes at issue in this case is "... clear termination language ... employed", and, in light of this fact, the Court of Appeals should not have inferred "... an intent to terminate the reservation."⁸

⁸Despite the lack of explicit termination language in the 1904, 1907, and 1910 Acts, the court below found material in the statutes and their legislative history from which it inferred an intent by Congress to disestablish parts of the Rosebud Indian Reservation. See, e.g., *Rosebud Sioux Tribe v. Kneip*, No. 74-1211 (8 Cir. 1975) (slip opinion of July 16, 1975), at 25-32. The errors in the Court of Appeals' legislative analysis have been documented

[footnote continued]

Mattz v. Arnett, 412 U.S. at 504, 37 L.Ed. at 106. *Accord*, *Seymour v. Superintendent*, 368 U.S. at 355, 7 L.Ed.2d at 349; *United States v. Celestine*, 215 U.S. at 285, 54 L.Ed. at 197. Furthermore, the 1904, 1907, and 1910 Acts, which did no "... more than open the way for non-Indian settlers to own land on the reservation in a manner which the Federal Government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards," should not be construed as effecting disestablishment of petitioner's reservation. *Seymour v. Superintendent*, 368 U.S. at 356, 7 L.Ed.2d at 349. To the contrary, such legislation is fully compatible with continued reservation status. *Mattz v. Arnett*, 412 U.S. at 496-97, 37 L.Ed.2d at 101-02.

More important, nothing said by the Court in the *De Coteau* case alters in any way the conclusions set forth above. In contrast to the cession statute which was at issue in that case, the surplus land acts in question here were "unilateral action by Congress" and not the "ratification of a previously negotiated agreement to which a tribal majority consented." *De Coteau v. District*

in detail in petitioner's brief, and therefore will not be repeated here.

To summarize briefly, however, the inescapable conclusion is that the lower court simply ignored certain legislative material relating to the 1904, 1907, and 1910 Acts which plainly evinces a Congressional intent not to disestablish petitioner's reservation. Furthermore, the Court of Appeals demonstrated a marked proclivity for resolving ambiguities in the legislative history of the land surplus statutes against petitioner—in direct contravention of the established legal principle that such ambiguities are to be resolved in favor of Indian tribes. Compare *Rosebud Sioux Tribe v. Kneip*, No. 74-1211 (8 Cir. 1975) (slip opinion of July 16, 1975), at 31, 42, 56 with *Squire v. Capoeman*, 351 U.S. 1, 100 L.Ed.883 (1956); *Carpenter v. Shaw*, 280 U.S. 363, 74 L.Ed.478 (1930); *Choate v. Trapp*, 224 U.S. 665, 56 L.Ed.941 (1912).

County Court, 420 U.S. at 448, 43 L.Ed.2d at 316. The 1904, 1907, and 1910 Acts did "merely open lands to settlement", and they did not "[appropriate and vest] in the tribe a sum certain . . . in payment for the express cession and relinquishment of 'all' of the Tribe's 'claim, right, title and interest' in the unallotted lands."⁹ *Id.* at

⁹The 1904 Act, which purports to ratify a "modified agreement" entered into between petitioner and the United States does on its face contain language of cession. Article I provides that "[t]he said Indians belonging on the Rosebud Reservation . . . for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota. . . ." Act of April 23, 1904, ch. 1484, 33 Stat. at 256.

To conclude, however, on the basis of the language quoted above that the 1904 Act was a cession statute would represent the proverbial elevation of form over substance. As the historical record clearly demonstrates, the "agreement" ratified by the 1904 Act never was consented to by the Rosebud Sioux Tribe. *See* S. REPT. NO. 651, 58th Cong., 2d Sess. (1904); H. REPT. NO. 443, 58th Cong., 2d Sess. (1904). Furthermore, Congress made no pretense in the statute about paying a sum certain for petitioner's land, but instead promised only that the proceeds from whatever sales took place would be credited to the Rosebud Sioux Tribe. *See* Act of April 23, 1904, ch. 1484, §6, 33 Stat. at 258. Thus, whatever its form may have been, in substance the 1904 Act plainly constituted a unilateral land surplus statute, and not the ratification of a bilateral agreement pursuant to which petitioner agreed to cede parts of its reservation.

The Court of Appeals recited at great length below that the only difference between the 1901 Agreement, which petitioner concedes would have effected a cession of its lands in Gregory County, and the 1904 Act is that the latter document altered only the "form of payment" specified in the former. *See Rosebud Sioux Tribe v. Kneip*, No. 74-1211 (8 Cir. 1975) (slip opinion of July 16, 1975), at 33-37. Completely apart from other important differences between the 1901 Agreement and the 1904 Act which the lower court failed to recognize, the above-mentioned line of

[footnote continued]

448, 43 L.Ed. at 316. To the contrary, the surplus land statutes affecting petitioner's reservation "benefited the tribe only indirectly, by establishing a fund dependent on uncertain future sales of its lands to settlers." *Id.* at 448, 43 L.Ed.2d at 316. Under these circumstances, petitioner's reservation plainly was not disestablished by the surplus land acts of 1904, 1907, and 1910.

CONCLUSION

The Court of Appeals erred in holding that the Gregory, Tripp and Mellette County portions of the Rosebud Reservation were disestablished by the 1904, 1907, and 1910 Acts. The Acts did not represent the ratification of an agreement previously negotiated between the United States and the Rosebud Sioux Tribe, but instead were actions taken by Congress unilaterally and without the consent of petitioner. Furthermore, the legislation merely opened certain lands within the boundaries of the Rosebud Reservation to settlement by non-Indians, and did not represent a cession of the Rosebud Tribe's title to the lands made available for sale. *See Ash Sheep Co. v. United States*, 252 U.S. 159, 64 L.Ed. 507 (1920). None of the surplus land statutes in question in this case provided that petitioner would receive a sum certain for any of the lands opened for settlement, but instead offered only the vague assurance that proceeds from future sales would be utilized for the Tribe's benefit. This Court long has held that such

reasoning misses the critical point—namely, that the change in form of payment, coupled with the lack of petitioner's consent to the change, means that the 1901 Agreement was transformed into a unilateral surplus land statute. *See De Coteau v. District County Court*, 420 U.S. at 448, 43 L.Ed.2d at 316.

legislation does not effect the disestablishment of an Indian reservation.

For these reasons, *amici curiae* urge the court to grant the petition for certiorari.

Respectfully submitted,

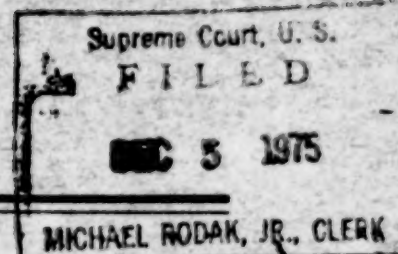
ARTHUR LAZARUS, JR.

600 New Hampshire Ave., N.W.
Washington, D.C. 20037

Attorney for Amici Curiae.

Of Counsel:

W. RICHARD WEST, JR.



IN THE
Supreme Court of the United States

October Term, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

**RESPONDENTS' OBJECTION TO MOTION FOR
LEAVE TO FILE BRIEF AMICI CURIAE**

William J. Janklow
Attorney General
State of South Dakota
Capitol Building
Pierre, South Dakota 57501

William F. Day, Jr.
Attorney for the Four Counties
Fifth and Main Street
Winner, South Dakota 57580

Tom D. Tobin
Special Assistant Attorney General
422 Main Street
Winner, South Dakota 57580

Attorneys for Respondents

IN THE
Supreme Court of the United States

October Term, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

**RESPONDENTS' OBJECTION TO MOTION FOR
LEAVE TO FILE BRIEF AMICI CURIAE**

Respondents hereby file objection to the motion by the Association on American Indian Affairs, Inc., and the Oglala Sioux Tribe of the Pine Ridge Indian Reservation for leave to file a brief *amici curiae*. Respondents' objection is based on the following grounds:

1. As a matter of record Respondents have never before objected to *amicus curiae* participation of any responsible party in litigation of this nature. In return for this consideration, Respondents have asked only that such participation be timely in order to permit an opportunity to respond. Although the Association on American Indian Affairs, Inc., and the Oglala Sioux Tribe had actual notice of the Petition before it was even filed and could, therefore, have filed a brief

amici curiae within a reasonable time prior to the consideration of the Petition, they did not choose to do so. As a result, Respondents did not receive a copy of the brief *amici curiae* until the Brief for Respondents in Opposition had been mailed to this Court for filing. No reason for this untimely delay is set forth in the motion. Respondents have been denied an opportunity to respond and contrary to Rule 42(1) the brief *amici curiae* was not submitted a reasonable time prior to consideration of the Petition.

Moreover, *amici curiae* have been aware of the general position of Respondents with respect to undue delay as a result of having participated in *DeCoteau v. District County Court*, 420 U. S. 425 (1975). Two weeks prior to filing this motion, Respondents informed counsel for *amici curiae* that consent would regretfully be withheld unless a timely filing permitted an opportunity to respond. Even in this respect, Respondents did not want to formally file an objection, but counsel for *amici curiae* thereafter refused to include in their motion a copy of any letter of Respondents to this Court stating the reasons why consent had been withheld. Respondents are aware of the admonition of this Court that motions of this nature are not favored. Under the circumstances, however, Respondents were left with no alternative but to withhold consent.

2. In three years over 1200 pages of documentation and argument were submitted to the courts below. The United States Government supported the position of the Tribe as *amicus curiae*. Counsel for Petitioner is a highly skilled and acknowledged Indian Claims Attorney. The 33-page Petition exhaustively deals with every aspect of the decision below that could even arguably merit attention. In addition to this expertise, the Office of the Solicitor General also intends to file a brief *amicus curiae* in support of the Petitioner in the near future. With all due respect, Respondents sincerely doubt that there are any "specific points" that the parties "are not likely to address." Motion at 3. In this light and at

this point in time, another brief *amici curiae* would seem to unnecessarily distract both counsel and the Court from the issue actually involved.

3. On November 17, 1975, Respondents were notified that a petition for a writ of certiorari directed to a similar issue involving the Oglala Sioux Tribe and a portion of their original Pine Ridge Reservation would be filed by December 24, 1975. Since counsel for the Association on American Indian Affairs also represents the Oglala Sioux Tribe, Respondents would submit that the arguments the Association and the Tribe wish to present to this Court could more appropriately be set forth in a brief therein. There is no reason why such a brief could not be filed within a reasonable time prior to consideration of the petition. Respondents would then have an opportunity to respond which has been effectively denied in the instant case.

For each and all of the foregoing reasons, the motion of the Association on American Indian Affairs and the Oglala Sioux Tribe should be denied.

Respectfully submitted,

William J. Janklow
Attorney General for South Dakota

William F. Day, Jr.
Attorney for the Four Counties

Tom D. Tobin
Special Assistant Attorney General

Attorneys for Respondents

December, 1975

JAN 8 1976

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court
of Appeals for the Eighth Circuit

Motion and Brief Amicus Curiae of the Covelo Indian
Community of the Round Valley Reservation in
Support of the Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth
Circuit

THOMAS W. FREDERICKS
JAMES F. KING, JR.
Native American Rights
Fund
1506 Broadway
Boulder, Colorado 80302
Counsel for Amicus Curiae

IN THE
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court
of Appeals for the Eighth Circuit

**Motion of Covelo Indian Community for Leave to File
Brief Amicus Curiae in Support of Petition for Certiorari**

The Covelo Indian Community of the Round Valley Reservation, as *amicus curiae*, moves for leave to file the attached brief in support of the Petition for Certiorari. The Rosebud Sioux Tribe has consented to filing the brief; respondents have not consented.

During the 1850's the United States removed California Indians for their protection to collection points throughout the State because of an influx of settlers seeking gold and land. Round Valley was one such repository. Today the Covelo Indian Community derives its membership from diverse ethnic stocks whose aboriginal domains once encompassed a great

part of Northern California: Yuki (native to Round Valley), Pomo, Wailacki, Nomelacki, Concow, Wintun, and Pitt River. The Round Valley Reservation is a last foothold for these groups, who are represented by amicus—a federally recognized tribal community organized under the Wheeler-Howard Act of 1934 (25 U.S.C. § 476).

Amicus has a keen interest in the outcome of this case. In order to protect the right of its members to hunt and fish within the Reservation's 1873 boundaries free of State interference, it has intervened as plaintiff in *Russ v. Wilkins*,¹ a suit pending before the United States District Court in San Francisco. In its defense in that action, California asserts that acts of Congress approved in 1890 and 1905 worked a reduction of the Reservation's boundaries. There is a degree of similarity between these statutes and the acts construed by the Eighth Circuit Court of Appeals in *Rosebud Sioux Tribe v. Kneip*, 521 F.2d 87 (1975). The decision below thus may have a harmful impact upon the Round Valley Community.

Amicus wishes to tell the Court why it is important to the Indians of Round Valley that the writ be allowed.

Respectfully submitted,

THOMAS W. FREDERICKS
JAMES F. KING, JR.
Native American Rights
Fund
1506 Broadway
Boulder, Colorado 80302
Counsel for Amicus Curiae

January, 1976

¹ Action No. C-73-2279 CBR (U.S. Dist. Ct., N.D. Cal.).

IN THE
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court
of Appeals for the Eighth Circuit

**Brief of Covelo Indian Community of the Round Valley
Reservation as Amicus Curiae in support of the
Petition for Certiorari**

INTEREST OF AMICUS CURIAE

The interest of *amicus curiae* is set forth in the attached Motion.

STATEMENT OF THE CASE

Amicus adopts the statement set forth in the Petition.

Two decisions of this Court, rendered a decade apart, have had great impact in the field of Indian law. In *Mattz v. Arnett*, 412 U.S. 481 (1973) and *Seymour v.*

Superintendent, 368 U.S. 351 (1962), the Court held that statutes opening reservations to non-Indian settlement were completely consistent with continued reservation status absent a Congressional intent to terminate "expressed on the face of the Act or . . . clear from the surrounding circumstances and legislative history." *Mattz v. Arnett*, *supra*, 412 U.S. at 505. In reliance on one or both of these precedents, lower federal courts have upheld the integrity of reservation boundaries in the face of a variety of "surplus land" or "diminishment" acts. *See, United States v. Washington*, 496 F.2d 620 (9th Cir. 1974) (Puyallup Reservation); *United States ex rel. Condon v. Erickson*, 478 F.2d 684 (8th Cir. 1973) (Cheyenne River Reservation); *City of New Town, North Dakota v. United States*, 454 F.2d 121 (8th Cir. 1972) (Fort Berthold Reservation).

Last term, this Court for the first time in many years found unmistakable Congressional intent to terminate a reservation. *DeCoteau v. District County Court*, 420 U.S. 425 (1975). The case involved a Congressionally-ratified cession agreement under which all unallotted lands of the Lake Traverse Reservation were ceded by the Sisseton-Wahpeton Tribe to the United States in exchange for \$2.50 per acre. The Court held that "exclusive tribal and federal jurisdiction", therefore, was "limited to the retained allotments". (420 U.S. at 446). However, it was most careful to point out that it "adhere[d] without qualification to both the holding and reasoning" of *Mattz* and *Seymour*. (*Id.*) And it made careful analysis of the distinctions existing between the Lake Traverse agreement and the acts construed in the two earlier cases. This analysis now provides ascertainable standards for use in determining whether a reservation

remains intact or whether Congress clearly intended to work a diminishment.

The Eighth Circuit has now decreed the disestablishment of large portions of the Rosebud and Pine Ridge Sioux Reservation, and has done so without following the lines of distinction expressly enunciated in *De Coteau*, *supra*. *Rosebud Sioux Tribe v. Kneip*, 521 F.2d 87 (1975); *United States ex rel Cook v. Parkinson*, No. 75-1306 (decided October 29, 1975), petition for certiorari docketed December 8, 1975, Docket No. 75-5867. Amicus suggests that these cases, if left unreviewed, will seriously undermine the body of "diminishment" law that has slowly grown since *Seymour*. They will cast a pall upon attempts by the Covelo Indian Community and other tribes to establish workable programs for law enforcement and resource management on their reservations. They will be used against the Covelo Indian Community in its attempt to confirm the undiminished character of the Round Valley Reservation.

II.

The Round Valley Reservation was first created by secretarial order in 1858, and encompassed the whole of the Valley from which it takes its name. Its existence was legitimized by Congressional act and presidential executive order.¹

Shortly after the Valley was first set apart, squatters took over a goodly part of its arable lands, asserting questionable claims under the Swamp Land Act of

¹ Act of April 8, 1864, c. 48, 13 Stat. 39; Executive Order of March 30, 1870, 8 ~~Kappler~~ 828 (1913); *Mattz v. Arnett*, *supra*, 412 U.S. at 493.

1 ~~Kappler~~ 828 (1901)

1850.² In light of this forceful pressure for land, Congress worked a compromise through the Act of March 3, 1873, c. 333, 17 Stat. 633, by specifically restoring the Southern two-thirds of the Valley to the public domain and greatly expanding the Reservation's boundaries to the North, East and West, into a primarily mountainous region, so that the new boundaries encompassed 103,000 acres. However, this compromise was not enough and settlers continued to press claims within the newly-defined Reservation. By the Act of October 1, 1890, c. 1271, 26 Stat. 658, Congress directed that the Reservation be surveyed into allotments and that the surplus lands be opened for sale to settlers. The 1890 Act also required that the Reservation "as at present existing" be surveyed into 640 acre tracts, and that the line between the lands reserved for allotment and the opened lands be run and properly marked. The Indians were not paid a lump sum for the areas thus sold. Rather, the Act directed that the sale proceeds be placed in the treasury "to the credit of" the Round Valley Indians. Following the opening of the Reservation, the lands sold quite slowly and, to remedy this situation, Congress passed the Act of February 8, 1905, c. 553, 33 Stat. 706, which authorized the sale of Round Valley lands in 160 acre, rather than 640 acre, parcels. In neither the 1890 nor the 1905 Acts was there any attempt at negotiation with the Indians of the Reservation. They were passed unilaterally, and neither provided for the restoration of any lands to the public domain.

III.

In *DeCoteau* this Court pointed to factual distinctions between the cession agreement before it and the

² Act of September 28, 1850, c. 84, 9 Stat. 519.

Mattz and Seymour acts. (420 U.S. at 488). Many of the same factors distinguish the Rosebud and Round Valley legislation from the *DeCoteau* agreement:

1. Round Valley and Rosebud were both opened by unilateral act of Congress rather than by ratification of a previously negotiated agreement. (The 1904 "ratification" of the earlier agreement negotiated with the Rosebud Tribe really constituted a rejection of that agreement through change of material terms to the contract).

2. Round Valley and Rosebud were not given a sum certain for their opened lands. In both cases the legislation merely provided that "uncertain future proceeds of settler purchases should be applied to the Indians' benefit". (420 U.S. at 488).

3. In both the case of Round Valley³ and the Rosebud Reservation,⁴ Congress had previously made restorations to the public domain in express terms, and failed to use such restoration language in the later enactments which opened these reservations for settlement.

Amicus suggests that the Eighth Circuit failed to apply the mode of analysis used by this Court in *DeCoteau*. While substantial differences exist between the Rosebud and the Round Valley experiences, amicus fears that the decision below, unless reviewed and reversed, will have an unsettling effect on this already complex area of law and will harm its own chances for success in the litigation which it has undertaken in reliance on *Mattz and Seymour*.

³ Act of March 3, 1873, c. 333, 17 Stat. 633.

⁴ Act of March 2, 1889, c. 405, 25 Stat. 888.

CONCLUSION

If the approach taken by the Eighth Circuit is allowed to stand it will adversely affect Indians on many reservations. Therefore, certiorari should be granted.

Respectfully submitted,

THOMAS W. FREDERICKS

JAMES F. KING, JR.

Native American Rights
Fund

1506 Broadway

Boulder, Colorado 80302

Counsel for Amicus Curiae

JAN 26 1976

MICHAEL RODAR, JR., CLERK

IN THE
Supreme Court of the United States
October Term, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

**RESPONDENTS' OBJECTION TO MOTION FOR
LEAVE TO FILE BRIEF AMICUS CURIAE**

William J. Janklow
Attorney General for South Dakota

William F. Day, Jr.
Attorney for the Four Counties

Tom D. Tobin
Special Assistant Attorney General

Attorneys for Respondents

IN THE
Supreme Court of the United States

October Term, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

**RESPONDENTS' OBJECTION TO MOTION FOR
LEAVE TO FILE BRIEF AMICUS CURIAE**

Respondents hereby file objection to the motion by the Covelo Indian Community of the Round Valley Reservation for leave to file a brief *amicus curiae*. Respondents' objection is based on the following grounds:

1. Contrary to Rule 42(1), the brief *amicus curiae* was not submitted a reasonable time prior to the consideration of the Petition. Respondents filed the Brief for Respondents in Op-

position prior to December 1, 1975. Thereafter, the Office of the Clerk informed Respondents that the Petition was distributed to the Court for consideration approximately two weeks later. The brief *amicus curiae* was not received by Respondents until January 12, 1976. No reason for this untimely delay is set forth in the motion.

As a matter of record, Respondents have never objected to the *amicus curiae* participation of any responsible party in litigation of this nature if such participation was timely. When it is not timely, the undue delay is not only contrary to the Rules of this Court, but it also effectively precludes any response on the merits by Respondents. Although Counsel for *amicus curiae* had actual notice of the Petition before it was even filed and could therefore have filed a timely brief which would have allowed Respondents to respond, they did not choose to do so. Under these circumstances, Respondents were left with no alternative but to withhold consent.

2. In three years, over 1200 pages of documentation and argument were submitted to the courts below. The United States Government supported the position of the Tribe as *amicus curiae*. Counsel for Petitioner is a highly skilled and acknowledged Indian Claims Attorney. The 33-page Petition exhaustively deals with every aspect of the decision below that could even arguably merit attention. Moreover, in addition to this expertise, this Court has invited the Solicitor General to file another brief expressing the views of the United States. The brief *amicus curiae* concedes that at best there is only "a degree of similarity" between the statutes involved in certain pending litigation in Federal District Court in California and the Acts construed below. In this light and at this point in time, Respondents would therefore submit that another brief *amicus curiae* would unnecessarily distract both counsel and the Court from the specific issue actually involved.

For each and all of the foregoing reasons, the motion of the Covelo Indian Community of the Round Valley Reservation

Respectfully submitted,

William J. Janklow
Attorney General for South Dakota

William F. Day, Jr.
Attorney for the Four Counties

Tom D. Tobin
Special Assistant Attorney General

Attorneys for Respondents

January, 1976

Supreme Court, U. S.
FILED

AUG 9 1976

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPENDIX
[Volume I – Pages 1-472]

PETITION FOR CERTIORARI FILED OCTOBER 11, 1975
CERTIORARI GRANTED MAY 24, 1976

(i)

TABLE OF CONTENTS

Page

Docket Entries	1
Amended Complaint	3
Answer of Defendant Counties of Mellette, Lyman, Tripp, and Gregory (10/10/72)	9
Answer of Defendants, Honorable Richard Kneip and Gordon Mydland (10/16/72)	12
Order Adding Parties Defendant (1/11/73)	27
Answer of Defendant United States (3/21/73)	28
Notice of Appeal (3/13/74)	30
Stay of Mandate (8/25/75)	32

Entry

#1 H.R. 4740 56th Cong. 1st Sess. (1899)	33
#1A 33 Cong. Rec. 380 (1899)	40
33 Cong. Rec. 291	40
33 Cong. Rec. 594	40
33 Cong. Rec. 2521	40
#1B H.R. Rep. No. 486, 56th Cong. 1st Sess. (1900) ..	42
#2 33 Cong. Rec. 380 (1899)	47
33 Cong. Rec. 54	47
33 Cong. Rec. 561	47
#3 34 Cong. Rec. 152 (1901)	48
34 Cong. Rec. 3556	48
#4 March 19, 1901 letters to Sec. of Interior and Indian Inspector McLaughlin from W. A. Jones Commissioner of Indian Affairs	51
#5 35 Cong. Rec. 377 (1901-1902)	59
35 Cong. Rec. 81	59
35 Cong. Rec. 751	60
35 Cong. Rec. 2477	60

(ii)

Entry	Page
35 Cong. Rec. 2717	60
35 Cong. Rec. 2882	61
35 Cong. Rec. 3187-3188	61
35 Cong. Rec. 3450	71
35 Cong. Rec. 3541	71
35 Cong. Rec. 3556-3557	72
35 Cong. Rec. 4424-4425	72
35 Cong. Rec. 4569	73
35 Cong. Rec. 4608	74
35 Cong. Rec. 4715	75
35 Cong. Rec. 4750	75
35 Cong. Rec. 4800-4807	76
35 Cong. Rec. 4855-4862	112
35 Cong. Rec. 4911-4918	152
35 Cong. Rec. 4963-4971	195
35 Cong. Rec. 5013	236
35 Cong. Rec. 5019-5024	237
35 Cong. Rec. 5198	273
35 Cong. Rec. 5613-5614	273
#5A S. Rep. No. 662, 57th Cong. 1st Sess. 1-6 (1902) ..	274
#5B H.R. Rep. No. 2099, 57th Cong. 1st Sess. 1-4 (1902)	289
#6 35 Cong. Rec. 377 (1901-1902)	299
35 Cong. Rec. 412	299
35 Cong. Rec. 680	299
35 Cong. Rec. 2814	300
#6A H. R. Rep. No. 954, 57th Cong. 1st Sess. 1-4 (1902)	301
#7 35 Cong. Rec. 377 (1901-1902)	310
35 Cong. Rec. 245	310
35 Cong. Rec. 206	310
35 Cong. Rec. 1279	311
#7A S. Doc. No. 31, 57th Cong. 1st Sess. 1-43 (1901) .	312
#8 35 Cong. Rec. 377 (1901-1902)	410
35 Cong. Rec. 747	410

(iii)

Entry	Page
#9 35 Cong. Rec. 377 (1901-1902)	413
35 Cong. Rec. 4706	413
#9A S. Doc. 324, 57th Cong. 1st Sess. 1-7 (1902)	414
#10 36 Cong. Rec. 148 (1902-1903)	430
36 Cong. Rec. 141	430
36 Cong. Rec. 2409	430
36 Cong. Rec. 2473	431
#10A H.R. Rep. No. 3839, 57th Cong. 2d Sess. 1-5 (1903)	432
#11 36 Cong. Rec. 148 (1902-1903)	443
36 Cong. Rec. 51	443
36 Cong. Rec. 2434	444
36 Cong. Rec. 2498	444
36 Cong. Rec. 2502	444
36 Cong. Rec. 2747-2748	445
36 Cong. Rec. 3074	449
#11A S. Rep. No. 3271, 57th Cong. 2d Sess. 1-5 (1903) .	450
#12 Letter of June 30, 1903 from Commissioner of Indian Affairs Jones to Indian Inspector McLaughlin	461
#13 Minutes of Council, July 24, 1903 to Aug. 10, 1903	467
#13A Excerpt from Report of the Commissioner of In- dian Affairs 1901. Letter dated Aug. 15, 1901 from the Supt. to the CIA	523
#14 36 Cong. Rec. 148 (1902-1903)	525
36 Cong. Rec. 1559	525
36 Cong. Rec. 626	527
#14A Excerpt from letter dated Aug. 31, 1903 from Inspector James McLaughlin to the Sec. of the Interior (N.A. Group 48, Records of the Office of the Sec. of the Int., Ind. Div.) ...	528

(iv)

<u>Entry</u>	<u>Page</u>
#14B Excerpts from Report of the Commissioner of Ind. Affairs, 1903	530
#15 Act of April 23, 1904 ch. 1484, 33 Stat. 254 . . .	531
#15A 38 Cong. Rec. 268 (1904)	541
38 Cong. Rec. 275	541
38 Cong. Rec. 902-903	541
38 Cong. Rec. 1010	542
38 Cong. Rec. 1292-1293	542
38 Cong. Rec. 1421-1429	543
38 Cong. Rec. 1467	592
38 Cong. Rec. 1468	592
38 Cong. Rec. 1469	592
38 Cong. Rec. 1601	593
38 Cong. Rec. 4984-4988	593
38 Cong. Rec. 5155	626
38 Cong. Rec. 5214	627
38 Cong. Rec. 5218	627
38 Cong. Rec. 5287	628
38 Cong. Rec. 5447	628
#15B H.R. Rep. No. 443, 58th Cong. 2d Sess. 1-19 (1904)	629
#15C S. Rep. No. 651, 58th Cong. 2d Sess. 1-12 (1904) .	678
#15D S. Doc. No. 158, 58th Cong. 2d Sess. 1-7 (1904) .	709
#16 38 Cong. Rec. 268 (1904)	724
38 Cong. Rec. 71	724
38 Cong. Rec. 1100	724
38 Cong. Rec. 1877	725
#17 38 Cong. Rec. 2827-2832 (1904)	726
#18 History of the Chicago & North Western Railway System	762
#19 Act of Feb. 7, 1905 ch. 545, 33 Stat. 700	763
#20 41 Cong. Rec. 241 (1906-1907)	765
41 Cong. Rec. 286	765
41 Cong. Rec. 2800	765

(v)

<u>Entry</u>	<u>Page</u>
#21 Minutes of Council from Dec. 14 to Dec. 20, 1906 & Jan. 17 to Jan. 21, 1907	766
#21A Excerpt from letter dated Feb. 12, 1907 from Inspector McLaughlin to the Sec. of the Interior (N.A. Group 75, BIA letters received, 1881-1907, 17945 Land (1907)	868a
#22 Act of March 2, 1907 ch. 2536, 34 Stat. 1230 . . .	869
#22A 41 Cong. Rec. 241 (1906-1907)	875
41 Cong. Rec. 268	875
41 Cong. Rec. 1782	876
41 Cong. Rec. 3004	876
41 Cong. Rec. 3103-3105	877
41 Cong. Rec. 3182-3183	888
41 Cong. Rec. 3264	892
41 Cong. Rec. 3323	892
41 Cong. Rec. 3552	893
41 Cong. Rec. 3996	894
41 Cong. Rec. 4120-4121	895
41 Cong. Rec. 4312	897
41 Cong. Rec. 4316	898
41 Cong. Rec. 4402	898
41 Cong. Rec. 4630	898
#22B H.R. Rep. No. 7613, 59th Cong. 2d Sess. 1-8 (1907)	899
#22C S. Rep. No. 6838, 59th Cong. 2d Sess. 1-7 (1907) .	915
#22D H.R. Rep. No. 8109, 59th Cong. 2d Sess. 1-2 (1907)	931
#23 Letters of Dec. 5, 1906 to the Sec. of Int. & J. McLaughlin from the Commissioner of Indian Affairs, F. E. Leupp.	933
#24 41 Cong. Rec. 241 (1906-1907)	943
41 Cong. Rec. 38	943
41 Cong. Rec. 15	943

(vi)

<u>Entry</u>	<u>Page</u>
#25 Letter of Dec. 19, 1906 to Sec. of Interior from Comm. Leupp	944
#26 41 Cong. Rec. 24 (1906-1907)	949
41 Cong. Rec. 27	949
41 Cong. Rec. 50-51	949
41 Cong. Rec. 3207	950
41 Cong. Rec. 3323	950
41 Cong. Rec. 4105	951
#26A S. Rep. No. 6831, 59th Cong. 2d Sess. 1-5 (1907) ..	952
#27 Letter of Dec. 15, 1906 to the Sec. of Int. from Commissioner Leupp	962
#28 41 Cong. Rec. 241 (1906-1907)	973
41 Cong. Rec. 3858-3861	973
#29 42 Cong. Rec. 494, (1907-1908)	983
42 Cong. Rec. 174	983
42 Cong. Rec. 3777	983
42 Cong. Rec. 4211	984
42 Cong. Rec. 4404-4405	984
42 Cong. Rec. 4482	988
#29A S. Rep. No. 440, 60th Cong. 1st Sess. 1-2 (1908) ..	989
#30 43 Cong. Rec. 228 (1908-1909)	992
43 Cong. Rec. 27	992
43 Cong. Rec. 65	992
43 Cong. Rec. 1559	992
43 Cong. Rec. 1679	993
#30A S. Rep. No. 887, 60th Cong. 2d Sess. 1-4 (1909) ..	995
#31 Letter of Feb. 10, 1909 to Senator Clapp from the Sec. of Interior	1002
#32 44 Cong. Rec. 268 (1909)	1007
44 Cong. Rec. 5	1007
44 Cong. Rec. 132	1007

(vii)

<u>Entry</u>	<u>Page</u>
#33 44 Cong. Rec. 268 (1909)	1008
44 Cong. Rec. 315	1008
44 Cong. Rec. 2013	1008
#34 Excerpt from letter dated April 2, 1909 from the first Asst. Sec. of the Int. to Inspector Mc- Laughlin (N.A. Group 75, BIA, Central File 1907-39, File 24400-09-3081, Pine Ridge ...	1009
#34A Minutes of Council of Mar. 11, 1909 and April 21, 1909	1011
#35 Act of May 30, 1910 ch. 260, 36 Stat. 448	1044
#35A 45 Cong. Rec. 295 (1909-1910)	1052
45 Cong. Rec. 2	1052
45 Cong. Rec. 668	1053
45 Cong. Rec. 905	1053
45 Cong. Rec. 958	1053
45 Cong. Rec. 1012-1013	1054
45 Cong. Rec. 1065-1071	1055
45 Cong. Rec. 1073-1075	1091
45 Cong. Rec. 1215	1103
45 Cong. Rec. 1752	1104
45 Cong. Rec. 5456-5473	1104
45 Cong. Rec. 5483	1203
45 Cong. Rec. 5538	1204
45 Cong. Rec. 6324-6326	1205
45 Cong. Rec. 6379-6381	1213
45 Cong. Rec. 6415-6416	1223
45 Cong. Rec. 6436-6437	1225
45 Cong. Rec. 6496	1233
45 Cong. Rec. 6517	1234
45 Cong. Rec. 7128-7129	1234
#35B S. Rep. No. 68, 61st Cong. 2d Sess. 1-5 (1910) ...	1235
#35C H.R. Rep. No. 429, 61st Cong. 2d Sess. 1-5 (1910) .	1246
#35D H.R. Rep. No. 1368, 61st Cong. 2d Sess. 1-5 (1910).	1257

(viii)

<u>Entry</u>	<u>Page</u>
#36 Letter of Feb. 25, 1910 to President Taft from Rosebud Indian Tribal Council	1266
#37 45 Cong. Rec. 295 (1909-1910)	1267
45 Cong. Rec. 147	1267
45 Cong. Rec. 10	1267
45 Cong. Rec. 1135	1268
45 Cong. Rec. 5476	1268
#37A H.R. Rep. No. 332, 61st Cong. 2d Sess. 1-5 (1910) ..	1270
#38 Letter of Jan 13, 1910 to Congressman Burke from the Sec. of the Interior	1280
#39 46 Cong. Rec. 147 (1910-1911)	1283
46 Cong. Rec. 14	1283
46 Cong. Rec. 55	1283
#40 Letter of Nov. 12, 1910 to Mr. Schofield from the 2d Asst. Commissioner of Indian Affairs	1284
#41 Series of letters between Mr. Derig & the 2d Asst. Commissioner of Ind. Affairs	1286
#42 Minutes of Council of Nov. 1, 1911	1290
#43 Act of Aug. 17, 1911 ch. 22, 37 Stat. 21	1300
#44 49 Cong. Rec. 109 (1913)	1302
49 Cong. Rec. 3	1302
49 Cong. Rec. 2209	1302
49 Cong. Rec. 4210	1303
#44A S. Rep. No. 1166, 62d Cong. 3d Sess. 1-5 (1913) ..	1307
#45 Letter to Senator Gamble from Sec. of Interior ...	1318
#45A Letter dated April 26, 1913 from Supt. Rosebud Indian Agency to CIA	1320
#45B Excerpts from letter dated Sept. 18, 1913 from the Supt. Rosebud Ind. Agency to the CIA	1324
#46 49 Cong. Rec. 109 (1913)	1326
49 Cong. Rec. 60	1326
49 Cong. Rec. 2525	1326

(ix)

<u>Entry</u>	<u>Page</u>
#47 49 Cong. Rec. 109 (1913)	1327
49 Cong. Rec. 64	1327
49 Cong. Rec. 3305	1327
#48 Petitions in opposition to H.R. 28606	1328
#49 Letter of Dec. 9, 1915 to Sec. of Int. from Comm. of Ind. Affairs	1356
#50 Series of 1915 letters between G. Van Meter and Dept. of Interior	1361
#51 Act of March 3, 1919, Public No. 338, 40 Stat. 1320	1373
56 Cong. Rec. 9490	1373
57 Cong. Rec. 1838-1839	1374
57 Cong. Rec. 4784	1376
#51A H.R. Rep. No. 742, 65th Cong. 2d Sess. 1-2 (1918) .	1377
#51B S. Rep. No. 745, 65th Cong. 3d Sess. 1-2 (1919) ..	1386
#52 Excerpt from the report of the General Accounting Office filed July 12, 1934 in the Court of Claims Docket No. C-531	1393
#53 Excerpts from the Constitution of the Rosebud Sioux Tribe	1394
#54 Memorandum dated April 6, 1972 from the Field Solicitor, Aberdeen, S.D. to the Area Direc- tor, Aberdeen, BIA	1398
#55 Letter dated August 23, 1974 from the Acting Area Director, Aberdeen, S.D. BIA to Neil Proto, Esquire, Department of Justice	1405
#56 Excerpts from instruments from National Archives Record Group N.75, Central Files, 1907-1921, Bureau of Indian Affairs	1409

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Rosebud Sioux Tribe,

Plaintiff,

vs.

Honorable Richard Kneip, Governor of the State of South Dakota, and Gordon Mydland, Attorney General of the State of South Dakota and The County of Mellette and The County of Lyman and The County of Tripp and the County of Gregory,

Defendants.

1972

* * * * *

Aug. 28 8)	Filing Amended Complaint
Sept. 22 9)	Filing Memorandum Decision
Sept. 22	Correct Copy entered in 1972 S.D. Order Book, Page 130
Sept. 27 10)	Filing Order Denying Motion to Dismiss by Defendants Kneip and Mydland
	* * * * *
Oct. 10 11)	Filing Answer of Defendant Counties of Mellette, Lyman, Tripp and Gregory to Amended Complaint
Oct. 10 12)	Filing Affidavit of Service of Answer
Oct. 16 13)	Filing Answer of the Defendants Honorable Richard Kneip and Gordon Mydland
Nov. 20 14)	Filing Motion for Change of Venue
Nov. 20 15)	Filing Consent to Granting Motion

Nov. 20 16) Filing Consent to Granting Motion
 Nov. 20 17) Filing Order Changing Venue to Central Division
 Nov. 20 Correct copy entered in 1972 S.D. Order Book, page 151
 Nov. 21 Notice of Entry and copy of Order mailed Richard Smith, C.J. Kelly and William F. Day, Jr.
 Dec. 22 18) Filing Brief of Plaintiff with Appendice to Brief
 Dec. 22 19) Filing Certificate of Service 1973
 Jan. 11 20) Filing Motion to Amend Pleadings
 Jan. 11 21) Filing Stipulation
 Jan. 11 22) Filing Order to Amend Pleadings
 Jan. 11 Notice of Entry and copy of Order mailed to William F. Day, Thomas R. Vickerman and Richard A. Smith
 March 21 23) Filing Separate Answer of United States
 * * * * *
 Feb. 7 27) Filing Memorandum Opinion
 * * * * *
 Feb. 14 28) Filing Order that Memorandum Opinion Shall Constitute Court's Finding of Fact and Conclusion of Law
 * * * * *
 Feb. 15 29) Filing Judgment Returning Surplus Lands to Public Domain
 * * * * *
 Mar. 13 30) Filing Notice of Appeal

AMENDED COMPLAINT (8/28/72)

I

INTRODUCTION

(1) This is an action commenced by the Rosebud Sioux Tribe of Indians, of Rosebud, South Dakota, seeking declaratory judgment to ascertain the meaning of certain acts of Congress which define the boundaries of the Rosebud Indian Reservation

II

JURISDICTION

(2) Jurisdiction is founded upon 28 U.S.C.A. § 1362. This is an action pursuant to 28 U.S.C.A § 2201 and § 2202 seeking to declare the rights and legal relations among the parties hereto.

III

(3) The Plaintiff, Rosebud Sioux Tribe of Rosebud South Dakota is a tribe of American Indians, recognized as such by the United States of America and, thereunder, by the Department of the Interior. The Rosebud Sioux Tribe is organized pursuant to the Indian Reorganization Act, Act of June 15, 1935, C. 260, 49 Stat. 378, 25 USCA § 476 et seq.

(4) The Honorable Richard Kneip is the Governor and the Chief Officer for the State of South Dakota.

(5) Gordon Mydland is the Attorney General and officer of State charged with the enforcement of the laws of the State of South Dakota.

- (6) The County of Mellette is a County of the State of South Dakota and is organized pursuant to the laws thereof.
- (7) The County of Lyman is a County of the State of South Dakota and is organized pursuant to the laws thereof.
- (8) The County of Tripp is a County of the State of South Dakota and is organized pursuant to the laws thereof.
- (9) The County of Gregory is a County of the State of South Dakota and is organized pursuant to the laws thereof.

IV

FACTUAL ALLEGATIONS

- (10) The Rosebud Indian Reservation had its beginning in the Treaty of Fort Laramie 1851, 11 Stat. 749, Volume 1, SDCL pp 63-66.
- (11) In the Fort Laramie Treaty it was provided and agreed to that the Sioux or Dahcota Nation should have a territory described as:
- commencing the mouth of the White Earth River, on the Missouri River; thence in a southwesterly direction to the forks of the Platte River; thence up the north fork of the Platte River to a point known as the Red Butte, or where the road leaves the river; thence along the range of mountains known as the Black Hills, to the head-waters of Heart River; thence down Heart River to its mouth; and thence down the Missouri River to the place of beginning.
- (12) The Sioux Treaty of 1868, 15 Stat. 635, Volume 1, SDCL pp 103-112, reduced the size of this territory when it established a new area for the Sioux Nation:

The United States agrees that the following district of country, to wit, viz: commencing on the east bank of the Missouri River where the forty-sixth parallel of north lititude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and in addition thereto, all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employees of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and henceforth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories, except such as is embraced within the limits aforesaid, and except as hereinafter provided.

- (13) Finally, the Rosebud Reservation as a single entity was created by the Treaty of 1889, an Act to divide the Reservation of Sioux Indians into separate reservations, 25 Stat. 888, Volume 1, SDCL pp 121-137.

(14) The newly created Rosebud Agency was established as:

Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of the latitude; thence west along said parallel to a point due south from the mouth of Black Pipe Creek; thence due north to the mouth of Black Pipe Creek; thence down White River to a point intersecting the west line of Gregory County extended north; thence south on said extended west line of Gregory County to the intersection of the south line of Brule County extended west; thence due east on said south line of Brule County extended to the point of beginning in the Missouri River, including entirely within said reservation all islands, if any, in said river.

(15) In the Act of April 23, 1904, Ch 1484; 33 Stat. 254, Volume 1, SDCL pp 152-159, the Congress of the United States acted to allow non-Indian homestead in a portion of the Rosebud Reservation wholly found within the County of Gregory. The act affected that portion of the Rosebud Reservation described as:

Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between

townships one hundred and one hundred and one north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximately four hundred and sixteen thousand (416,000) acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

(16) In the Act of March 2, 1907, Ch. 2536; 34 Stat. 1230, Volume 1, SDCL pp 159-162, the Congress of the United States acted to allow non-Indian homestead in a portion of the Rosebud Reservation, being the whole of Tripp County and a part of Lyman County. The act affected that portion of the Rosebud Reservation described as:

That portion of the Rosebud Indian Reservation in South Dakota lying south of the big White River and east of Range Twenty-five west of the sixth principal meridian.

(17) In the Act of May 30, 1910, Ch. 260; 36 Stat. 448, Volume 1, SDCL-167-172, the Congress of the United States acted to allow non-Indian homestead in that portion of the Rosebud Reservation that now makes up the County of Mellette.

(18) All areas within the present boundaries of the Rosebud Sioux Indian Reservation, wherever they may be, are "Indian Country" as defined by USCA § 1151.

(19) Within the areas of "Indian Country" of the Rosebud Sioux Indian Reservation, the Plaintiff has exclusive criminal jurisdiction, excepting for those crimes defined in 18 USCA § 1152, over all Indians to the exclusion of the Jurisdiction of the Defendants.

(20) Within the areas of "Indian Country" of the Rosebud Sioux Indian Reservation, the Plaintiff has exclusive jurisdiction over all civil matters affecting

Indians to the exclusion of the jurisdiction of the Defendants.

(21) At this time, in those portions of Gregory, Tripp, Lyman and Mellette Counties within the Rosebud Reservation in which non-Indian homestead has been allowed, the State of South Dakota and the particular named Counties are exercising their criminal and civil jurisdiction over American Indians therein. This exercise of criminal and civil jurisdiction by the defendants is to the exclusion of the plaintiff's criminal and civil jurisdiction, as if the whole of these areas were not "Indian Country" as defined by the laws of the United States.

(22) All of the Rosebud Reservation, as described in the Sioux Treaty of 1889 is still "Indian Country" as defined by the laws of the United States, and none of the three homestead Acts, allowing non-Indian homestead within the Rosebud Sioux Indian Reservation, reduced the size of the Rosebud Sioux Indian Reservation.

Wherefore, the Plaintiff prays this Court to declare:

A. That the Act of April 23, 1904, Ch. 1484; 33 Stat. 254, allowing non-Indian homestead within that portion of the Rosebud Sioux Indian Reservation that constitutes Gregory County, did not reduce the size of the Rosebud Reservation and that the portion of Gregory County affected by the Act of April 23, 1904, remained "Indian Country" as defined by the laws of the United States depriving the defendants of all civil and criminal jurisdiction over Indians therein.

B. That the Act of March 2, 1907, Ch. 2536; 34 Stat. 1230, allowing non-Indian settlement in a portion of the Rosebud Indian Reservation affecting Tripp and Lyman Counties did not reduce the size of the Rosebud

Reservation and that the portions of Tripp and Lyman Counties affected by the Act of March 2, 1907, remained "Indian Country" as defined by the laws of the United States depriving the defendants of all civil and criminal jurisdiction over Indians therein.

C. That the Act of May 30, 1910, Ch. 260; 36 Stat. 448, allowing non-Indian settlement in a portion of the Rosebud Indian Reservation affecting Mellette County did not reduce the size of the Rosebud Reservation and Mellette County as affected by the Act of May 30, 1910, remained "Indian Country" as defined by the laws of the United States depriving the defendants of all civil and criminal jurisdiction over Indians therein.

D. The Plaintiff further prays for its cost and disbursements herein and for such other relief as the Court may deem just.

Dated this 25th day of August, 1972.

ANSWER OF DEFENDANT COUNTIES (10/10/72)

Comes now the Defendant Counties of Mellette, Lyman, Tripp and Gregory, and for their Answer to Amended Complaint of Plaintiff allege:

1. Defendants deny each and every allegation, thing or matter alleged in Plaintiff's Complaint which is not hereafter specifically admitted.

2. Defendants admit paragraphs I (1), III (3), (4), (5), (6), (7), (8), (9); and IV (10) of Plaintiff's Complaint.

3. Concerning Plaintiff's Complaint II (2), Defendants deny jurisdiction is founded on 28 USCA Sec. 1362. Defendants admit balance of allegation.

4. Concerning Plaintiff's Complaint IV (11), Defendants admit the allegation may be an excerpt out of the language of the treaty, but denies that said treaty or allegation is material as to where the Reservation boundaries are today.

5. Concerning Plaintiff's Complaint IV (12), Defendants admit the allegation may be an excerpt out of the language of the treaty, but denies that said treaty or allegation is material as to where the Reservation boundaries are today.

6. Concerning Plaintiff's Complaint IV (14), Defendants admit the allegation, but deny that said allegation is material to where the Reservation boundaries are today.

7. Concerning Plaintiff's Complaint IV (14), Defendants admit the allegation if it refers to paragraph IV (13) of Plaintiff's Complaint.

8. Concerning Plaintiff's Complaint IV (15), Defendants admit that Act took place, but that the Court should interpret the Act as to its meaning. Defendants allege that after allotment and homestead settlement, the boundaries contemplated within the Act diminished the reservation and that the same was no longer Indian Reservation and/or Country, except as to individual Indian Allotted lands.

9. Concerning Plaintiff's Complaint IV (16), Defendants admit the Act took place, but that the Court should interpret the Act as to its meaning. Defendants allege that after allotment and homestead settlement, the boundaries contemplated within the Act diminished the Reservation and that the same was no longer Indian Reservation and/or Country, except as to individual Indian Allotted lands.

10. Concerning Plaintiff's Complaint IV (17), Defendants admit the Act took place, but that the Court should interpret the Act as to its meaning. Defendants allege that after allotment and homestead settlement, the boundaries contemplated within the act diminished the Reservation and that the same was no longer Indian Reservation and/or Country, except as to individual Indian Allotted lands.

11. Concerning Plaintiff's Complaint IV (18), Defendants do not have enough information in which to form a belief and, therefore, deny the same; if the allegation extends to lands outside the Defendants' boundaries, said allegation would not be material as to those areas.

12. Defendants deny paragraph IV (19) of Plaintiff's Complaint.

13. Defendants deny paragraph IV (20) of Plaintiff's Complaint.

14. Concerning Plaintiff's Complaint IV (21), Defendants deny that they are within the boundaries of the Rosebud Indian Reservation, or that their areas are Indian Country. Defendants admit that they exercise Criminal and Civil Jurisdiction over all area within their borders, except Indian or Trust lands. Defendants deny that the exercise of their jurisdiction is to the exclusion of Plaintiff's criminal and civil jurisdiction.

15. Concerning Plaintiff's Complaint IV (22), Defendants deny the same.

16. That for a further and Affirmative Defense to Plaintiff's Complaint, Defendants allege that their boundaries are not within the Rosebud Indian Reservation and are not Indian Country. That Defendants are free to exercise Criminal and Civil Jurisdiction within their

boundaries, over all persons within their boundaries regardless of race, creed, national origin or color.

WHEREFORE, Defendants pray that the Court determine that all lands within Defendants' boundaries are not Indian Country nor are said lands part of the Rosebud Indian Reservation, and that actually Todd County, South Dakota comprises the present Rosebud Indian Reservation, and for such other and further relief as to the Court may seem just, equitable and proper, and Defendants pray that they have and recover their costs and disbursements herein.

ANSWER OF DEFENDANTS KNEIP AND MYDLAND (10/16/72)

COME NOW the Defendants, Honorable Richard Kneip, Governor of the State of South Dakota, and Gordon Mydland, Attorney General of the State of South Dakota, and in answer to the Amended Complaint of the Plaintiff, state as follows:

FIRST DEFENSE

The Amended Complaint fails to state a claim against the named Defendants, or either of them, upon which relief can be granted.

SECOND DEFENSE

The Amended Complaint fails to show jurisdiction of the Court over the subject matter of this action as such applies to the above named defendants.

Section 2201 of Title 28 of the United States Code requires that an actual controversy exist between the

parties before the Federal Declaratory Judgment Act may be invoked. There is no showing in the Amended Complaint of any actual controversy between the Plaintiff, the Rosebud Sioux Tribe, and the above named Defendants.

THIRD DEFENSE

The above entitled action should be dismissed by reason of the failure of the Plaintiff to join indispensable parties as parties to the above entitled action.

Under the laws of the United States, the Plaintiff, and its enrolled members, are wards of the United States Government. The United States of America, in law, is the guardian of said Plaintiff, but is not named a party to this action.

Under the allegations in said Amended Complaint contained, the Plaintiff is seeking to greatly enlarge the territorial boundaries of the Rosebud Sioux Indian Reservation. Under the Enabling Act which authorized the territory to be formed into the State of South Dakota, and under the Compact between the State of South Dakota and the United States of America, an integral part of the Constitution of the State of South Dakota, enacted in pursuance to such Enabling Act, it was solemnly agreed by and between such parties, the State of South Dakota, and the United States of America, that all lands then in the possession of any Indian tribe within the territorial limits of the State of South Dakota would remain under the exclusive jurisdiction and control of the Congress of the United States, until removed from the possession of such Indian tribe.

If the Plaintiff be successful in its allegations as in said Amended Complaint contained, in view of this solemn

Compact between the State of South Dakota and the United States of America, multitudinous problems will immediately arise because of the activity of the citizens, the State of South Dakota, and its political subdivision, in derogation of the exclusive jurisdiction and control of the Congress of the United States. The solution of these problems can be made only by the Congress of the United States, and the United States of America. The Plaintiff, as a ward of the Federal Government, has no power or authority to attempt the solution of such problems.

The United States of America and the Congress of the United States are indispensable parties, not named as parties, to the above entitled action.

FOURTH DEFENSE

The above named Defendants admit the allegations stated in paragraphs 4, 5, 6, 7, 8 and 9 of Paragraph III of said Amended Complaint.

The above named Defendants admit that the Congress of the United States did enact those certain Acts of Congress set forth in Paragraphs 10, 11, 12, 13, and 14 of Paragraph IV of said Amended Complaint, but by such admissions do not admit that these are the only Acts of Congress affecting the territory thrown in dispute by the Amended Complaint of the Plaintiff.

The named Defendants deny each and every other material allegation, matter and thing, not heretofore admitted or explained in said Amended Complaint contained.

FIFTH DEFENSE (Latches)

The Plaintiff is not entitled to maintain this suit or to assert that the exterior boundaries of the Rosebud Sioux Indian Reservation includes the Counties of Mellette and Tripp, all of Gregory County West of the 99th Parallel, and the described portion of Lyman County, hereinafter designated as the "disputed area," by reason of laches.

FACTUAL SITUATION

The Plaintiff in its Amended Complaint has admitted the disputed area was opened for and homesteaded by whites. It has admitted that such homesteading resulted from the action of the Congress of the United States, as follows:

- 1904—Homesteading in disputed area in Gregory County;
- 1907—Homesteading in Tripp County and disputed area in Lyman County;
- 1910—Homesteading in Mellette County.

That since the opening of such disputed area for homesteading, at the time hereinafter set forth, for more than fifty years the white settlers and their successor in interest, people of Indian descent, whether enrolled or not enrolled as members of the Rosebud Sioux Tribe, and the Plaintiff itself, until the commencement of this action, had considered such Congressional authorization to homestead, removed such disputed area from the boundaries of the Rosebud Sioux Indian Reservation, and returned such land to the United States of America, who, upon the granting of homestead rights and the issuance of a patent to such land to a white settler relinquished exclusive jurisdiction over such patented land and author-

ized the same to become an integral part of the State of South Dakota and the United States of America.

That no white person would have settled within, homesteaded, and applied and accepted a patent to land in the disputed area, were he to believe, or were he told at the time of so acting that his patented land remained within the boundaries of the Rosebud Sioux Indian Reservation, under the control of the Congress of the United States, any of its authorized agents, and any authorized tribal council or other governing body of the Rosebud Sioux Tribe.

That Congress of the United States itself at the time of the enactment of such Acts authorizing settlement by whites, and at this time, has recognized that upon the issuance of patents to such land to white settlers that such land was removed from the exterior boundaries of the Rosebud Sioux Indian Reservation, the exclusive jurisdiction of the United States of America, and became a part and parcel of the state of South Dakota.

This Congressional recognition is patent. Under the Enabling Act which permitted South Dakota to be organized as a State of the United States of America, and the Compact between the State of South Dakota and the United States of America, as contained in the Constitution of the State of South Dakota, it was recognized by both parties that the lands of any Indian tribe within the State of South Dakota remained under the exclusive jurisdiction and control of the Congress of the United States, and that such territory was no part of the State of South Dakota, and was not subject to any jurisdiction and control of the State of South Dakota. That until the enactment of the Acts authorizing white settlement, hereinbefore set forth, Congress of the United States furnished money and other guidance over such disputed

territory. Since the enactment of such Acts, authorizing white settlement, and the issuance by the United States Government of patents to such land, the Congress of the United States, in recognition of the transfer of jurisdiction and control over the lands in such disputed areas to white persons, from the United States to the State of South Dakota has exercised no jurisdiction or control over such white settlers and their successors in interest, nor has it performed any duties, exercised no authority, or developed the economic facilities of such area, as it formerly had performed over such territory prior to authorizing its homesteading by the whites, and as it continues to perform at the present, over the territory which it is undisputed lies within the boundaries of the Rosebud Sioux Indian Reservation.

As a result of such uniform and universal recognition that the disputed territory, settled by the whites, is a part of the State of South Dakota, and is excluded from the territorial boundaries of the Rosebud Sioux Indian Reservation, subsequent to homesteading and patenting, such disputed territory has been developed substantially through the energy, efforts, and moneys of such white settlers, their successors in interest, and the State of South Dakota and its political subdivisions, unaided by any effort of the Plaintiff.

As evidence of such universal recognition of the status of such disputed area, as not being within the territorial boundaries of the Rosebud Sioux Indian Reservation, the latest available statistics relative to several important areas is set forth.

POPULATION AND NATIONALITY OF DISPUTED AREA

The first count of the latest Federal Census of 1970 has been subject to exhaustive analysis. As a result of the following statistics relative to the **WHOLE** of the counties in such disputed area are set forth. For brevity, the name of each affected county will be set forth, followed by six separate categories. Most of these categories are self-explanatory. They are as follows: **TOTAL POPULATION**—showing the total population in such county. **WHITE** designating the number of persons in such county of white descent. **NEGRO**, the number of Negro descent; **INDIAN**, the number of persons classified as Indian descent. **SPECIFIED**—this includes those inhabitants of the Japanese, Chinese, Filipino, Hawaiian or Korean races. **REPORTED**—these persons reported of being of an unspecified race other than white.

It is admitted that such computations are for the complete counties in dispute. It is alleged, however, that for the purposes of this defense it can be assumed that the same ratios between whites and Indians should hold insofar as the disputed territory is concerned to the whole county. The Table of Population for such disputed areas is as follows:

MELLETT COUNTY

Total Population	2420
White	1591
Negro	1
Indian	822
Specified	1
Reported	5

This analysis shows that sixty-six percent (66%) of the residents of Mellette County are whites, while thirty-four percent (34%) are Indians.

TRIPP COUNTY

Total Population	8171
Whites	7668
Negro	1
Indian	501
Specified	1
Reported	0

This analysis reveals that the population of Tripp County consists of ninety-four percent (94%) whites and six percent (6%) Indians.

GREGORY COUNTY

Total population	6710
White	6383
Negro	3
Indian	318
Specified	2
Reported	4

This analysis shows that the population of all of Gregory County consisted of ninety-five percent (95%) whites, and five percent (5%) Indian.

LYMAN COUNTY

Total population	4060
White	3469
Negro	1
Indian	588
Specified	1
Reported	1

Such analysis shows that the entire population of Lyman County consisted of eighty-five (85%) whites and fifteen percent (15%) Indian.

It is apparent that a majority of the persons residing within such disputed counties are white. Such persons did

not become residents in such areas with the understanding that they were residing without the State of South Dakota, and within the territorial boundaries of the Rosebud Sioux Indian Reservation. Until the commencement of this action, such white inhabitants were not told by the Plaintiff that such was the case.

ASSESSED VALUATION OF PORTIONS OF THE DISPUTED TERRITORY

All of the territory within that area now claimed as a portion of the Rosebud Sioux Indian Reservation, hereinafter for convenience designated as "disputed" territory, is subject to taxation, levied in pursuance to laws enacted by the South Dakota Legislature. At all times since the opening of such disputed territory to settlement, and after the grant of a United States Patent, such taxation have been assessed and collected, or land sold for nonpayment of the taxes. At no time has such tax payments inured to the benefit of the Plaintiff. At no time, to these Defendants' knowledge, has the Plaintiff sought to gain control of such taxes.

The total valuation of real estate and personal property assessments, excluding the utility property, in all of the disputed counties has been certified by the Commissioner of Revenue as of August 28, 1972. Because of the limited amount of territory of Lyman County lying in such disputed area, Lyman County is omitted. All of such valuation figures are for the total assessments in the entire county. Such certification shows the following valuation as of the date mentioned.

MELLETTTE COUNTY

Real Estate	\$10,011,714.00
Personal property	5,070,278.00

TRIPP COUNTY

Real Estate	39,048,820.00
Personal property	13,725,386.00

GREGORY COUNTY

Real Estate	24,443,690.00
Personal property	10,752,705.00

Such valuation of property, both real estate and personal property, has resulted from many factors, including the labor and diligence on the part of white inhabitants of such disputed areas. Such shows a tremendous growth in the development of such disputed area since homesteading. Such economic growth has resulted from the recognition by everyone, including the Plaintiff, that this disputed territory, in fact, is a part of the State of South Dakota and is not a portion of the Rosebud Sioux Indian Reservation.

SCHOOL DISTRICT EXPENDITURES

The State of South Dakota, mainly through the establishment of local school districts, operates the public schools in the disputed territory.

All of such school districts were developed mainly by the contribution of funds from either the State, the county or local school districts. None of such educational system was developed by the cooperation or initiative of the Plaintiff. Rather, for fifty years the Plaintiff, along with the State of South Dakota and the counties wherein the disputed territory lies, treated such areas as within the State of South Dakota, for educational purposes, and as being without the boundaries of the Rosebud Sioux Indian Reservation. This allegation must be true, for if not, the obligation to furnish such educational opportunity to youths would have been on the Plaintiff or the

Federal Government, with no obligation of any kind upon the State of South Dakota or any subdivision thereof.

Each of the school districts embraced in the disputed area have reported their total receipts for the fiscal year of 1971-71, and have broken such receipts down into the agencies contributing thereto. Such contributions will be shown for each of the school districts, under the following classifications: (1) TOTAL RECEIPTS—monetary receipts from all sources; (2) LOCAL RECEIPTS—payment mainly from the assessment and taxation of the residents in the school district; (3) COUNTY PAYMENTS—payments mainly from educational funds collected at the county level; (4) STATE PAYMENT—the total of payments made from the state treasury; (5) STATE AID—the amount of the state payment resulting from payments to such school district during the stated fiscal year as distributed in pursuance to the minimum foundation program; (6) STATE APPORTIONMENT—the amount of moneys apportioned to such school district from the interest of the South Dakota School Fund; (7) FEDERAL AID—the complete receipts from all federal aid; (8) 815 FUNDS—distributions from Federal Government from “815” Funds; (9) 874 FUNDS—distributions by Federal agencies under Public Law 874 (impacted areas); (10) INDIAN EDUCATION—Federal funds to educate Indians; (11) EDUCATION ACT—federal distributions in compliance with Titles I, II and III of the Federal Elementary Education Act.

GREGORY IND. SCHOOL DIST. #111 (in disputed area of Gregory County)

1. Total receipts	\$672,316.21
2. Local receipts	490,557.82
3. County payments	2,008.42

4. State Payments	75,451.54
5. State aid	55,937.50
6. State apportionment	16,680.00
7. Federal aid	50,379.39
8. 815 Funds	0
9. 874 Funds	0
10. Indian education funds	0
11. Education Act	42,000.00

BURKE IND. SCHOOL DIST #114 in disputed area of Gregory County)

1. Total receipts	460,536.70
2. Local receipts	350,872.97
3. County payment	1,382.55
4. State payment	57,917.94
5. State aid	44,925.80
6. State apportionment	11,456.33
7. Federal aid	30,024.31
8. 815 Funds	0
9. 874 Funds	0
10. Indian education funds	0
11. Education Act	25,104.00

WOOD IND. SCHOOL DIST #30 (Mellette County)

1. Total receipts	\$278,053.34
2. Local receipts	193,629.75
3. County payment	7,019.54
4. State payment	31,872.55
5. State aid	23,104.58
6. State apportionment	1,299.27
7. Federal aid	35,414.41
8. 815 Funds	0
9. 874 Funds	16,518.00
10. Indian education	0
11. Education Act	17,000.00

WHITE RIVER IND. SCHOOL DIST. #29 (Mellette County)

1. Total receipts	510,141.39
2. Local receipts	254,828.44
3. County payment	7,213.44
4. State payment	68,101.94
5. State aid	53,318.62
6. State apportionment	11,180.46
7. Federal aid	178,508.91
8. 815 Funds	0
9. 874 Funds	77,247.00
10. Indian education	60,832.40
11. Education Act	30,309.42

NEW COLOME IND. SCHOOL DIST. #120 (Tripp County)

1. Total Receipts	314,483.94
2. Local receipts	224,028.85
3. County payment	1,654.81
4. State payment	56,124.77
5. State aid	40,629.49
6. State apportionment	7,833.28
7. Federal aid	12,874.27
8. 815 Funds	0
9. 874 Funds	0
10. Indian Education	0
11. Education Act	11,834.19

WINNER IND. SCHOOL DIST. #110 (Tripp County)

1. Total receipts	1,354,267.08
2. Local receipts	1,035,093.70
3. County payment	13,412.05
4. State payment	181,484.77
5. State aid	136,180.17
6. State apportionment	41,831.82
7. Federal aid	117,908.98

8. 815 Funds	0
9. 874 Funds	18,472.00
10. Indian Education	21,010.00
11. Education Act	52,845.65

The disputed area in Lyman County lies within several independent school districts, and no adequate or accurate computation of the school receipts in such area may be made.

A recapitulation of the total receipts for school purposes, in the disputed area, as above outlined, reveals that during school year fiscal 1971-71 such school districts received total receipts of \$3,589,798.66. Of this amount, local school district contributed \$2,572,827.38, the counties contributed \$32,690.81, and the State, through state aid and apportionment contributed \$470,953.51. The total contribution from State or its subdivisions being \$3,078,471.70 or some 85.7% of such total receipts.

HIGHWAY DEVELOPMENT IN DISPUTED AREA

Over the years the State of South Dakota and its political subdivisions developed a highway system in the disputed area. The Plaintiff at no time assisted in either the construction, development or maintenance of such system. It must be admitted that on the "State Trunk System" federal funds have implemented (sic) the state funds, but such federal funds as utilized have been grants to the State of South Dakota, and not grants for the aid and benefit of the Plaintiff.

All of such highway development has occurred, with the acquiescence and consent of the Plaintiff, as a development of the State of South Dakota, and its subdivisions, and not as development within the interior boundaries of the Rosebud Sioux Indian Reservation.

As of December 31, 1971, the mileage of highways existing in the disputed area, together with the designation of the type of highway that has been developed, is shown on the following table:

COUNTY	State Trunk Mileage	County		Township	City Streets	Total
		County system Mileage	secondary (unorg. twp.)			
Gregory (west of 99th mer.)	140.01	296.25	114.33	483.49	35.26	1,069.35
Lyman (ori- ginal Reserv. So. of White River)	10.35	16.74	---	30.90	---	58.07
Mellette	127.91	264.82	100.22	346.12	8.82	847.89
Tripp	150.76	611.61	5.91	1,290.59	29.60	2,088.47
TOTAL	429.04	1,189.42	220.46	2,151.18	73.68	4,063.78

SIXTH DEFENSE (Estoppel)

Plaintiff ought not be admitted to say that any of the disputed area herein in controversy is within the territorial boundaries of the Rosebud Sioux Indian Reservation, because the history of the development of such disputed area, subsequent to the opening of such area for homesteading by white settlers works an estoppel of such an allegation, by the Plaintiff.

The factual matters set forth in Fifth Defense, raising the issue of laches, is made a part of this defense, by reference, as if fully set forth herein.

WHEREFORE, the above named Defendants, and each of them, pray that the Court declare:

That all of the territory heretofore put into controversy by the Amended Complaint of the Plaintiff be declared to not be within the boundaries of the Rosebud Sioux Indian Reservation, nor within that area designated as "Indian Country" but, rather is and remains territory within the jurisdiction of the State of South Dakota.

That the Amended Complaint of the Plaintiff be dismissed, with costs and disbursements to the Defendants, and for such other and further relief to the Defendants as to the Court may seem just and equitable.

DATED this 12th day of October, 1972.

ORDER ADDING PARTIES DEFENDANT (1/11/73)

Upon Plaintiff's motion and good cause appearing and pursuant to Rule 21, Federal Rules of Civil Procedure, therefore it is ORDERED:

(1) That Gordon Mydland is hereby dismissed as a party defendant herein upon him leaving the office of the Attorney General for the State of South Dakota;

(2) That Kermit A. Sande, upon his assumption of the office of the Attorney General for the State of South Dakota, shall become a party defendant herein and unless he chooses to file an additional answer within 20 days of his taking office, he shall be bound by the answer of his successor, Gordon Mydland;

(3) That the United States of America is made a party defendant hereto and that upon service on the required federal officers of this order and a copy of the complaint therein, they shall have 60 days to make such answer as they may deem required.

Dated this 10th day of December, 1972.

BY THE COURT:

/s/ ANDREW W. BOGUE
Andrew W. Bogue
U.S. District Court

ANSWER OF DEFENDANT UNITED STATES
(3/21/73)

Comes now the defendant United States of America and for its Answer to plaintiff's Complaint, states and alleges as follows:

I.

Denies each and every material and allegation of the Complaint except those Paragraphs specifically admitted.

II.

Admits Paragraph I of plaintiff's Complaint.

III

Denies that Paragraph II waives the sovereign immunity of the United States.

IV.

Admits Paragraph IV through Paragraph XVIII.

V.

Denies the allegations in Paragraph XIX as they relate to 18 U.S.C. § 1151, however, defendant United States of America would admit this Paragraph if 18 U.S.C. § 1153 were used.

VI.

Denies Paragraph XX insomuch as it is the position of the defendant United States of America that the Federal Court has jurisdiction by virtue of various provisions found in Title 28 of the United States Code.

VII.

Defendant United States of America lacks information sufficient to admit Paragraph XXI and therefore denies the same.

VIII.

Defendant United States of America admits Paragraph XXII of plaintiff's Complaint.

Dated this 20th day of March, 1973.

[Opinion reported in 375 F. Supp. 1965 printed in Appendix to Petition for Writ of Certiorari, pp. 63-113]

[Judgment — Printed in Appendix to Petition for Writ of Certiorari, p. 114]

NOTICE OF APPEAL (3/13/74)

The Plaintiff hereby appeals to the United States Court of Appeals for the Eighth Circuit from the final judgment entered in this action of February 15, 1974.

[Subscription Omitted in Printing]

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

74-1211

September Term, 1974

Rosebud Sioux Tribe,

Appellant,

vs.

Hon. Richard Kneip, Governor of
the State of South Dakota, et al.,

Appellees.

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

Counsel for the parties to this appeal are directed to file simultaneous supplemental briefs in this cause ad-

ressed to the question of the applicability and effect of the recent Supreme Court decision contained in *De-Coteau v. District Court*, No. 73-1148, and *Erickson v. Feather*, No. 73-1500, which cases were consolidated for decision of the Supreme Court of the United States, reported in 43 U.S.L.W. 4321 under date of March 3, 1975. The simultaneous briefs are to be in typewritten form, on letter-size paper, fastened in the left margin and are to be filed within thirty days from the date of this order. An original and four copies are to be filed with the clerk of this court and copies served on opposing counsel. No further argument will be required after the filing of simultaneous, supplemental briefs.

March 12, 1975

[Opinion reported in 521 F.2d 87 — Printed in Appendix to Petition for a Writ of Certiorari, pp. 1-61]

[Judgment — Printed in Appendix to Petition for Writ of Certiorari, p. 61]

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 74-1211

September Term, 1974

Rosebud Sioux Tribe,

Appellant,

vs.

Hon. Richard Kneip, Governor of
the State of S.D., and Gordon
Mydland, Attorney General of the
State of S.D. and the County of
Melette and the County of Lyman
and the County of Tripp and the
County of Gregory,

Appellees.

) Appeal from the
) United States
) District Court
) for the District
) of South Da-
) kota.

On motion of appellant, it is now here ordered that the issuance of the mandate herein be, and the same is hereby, stayed until to and including October 14, 1975. If within that time there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari has been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

August 25, 1975

74-1211

September Term, 1975

Appellant's motion for leave to file enlarged petition for rehearing en banc out of time has been considered by the Court and is denied.

September 16, 1975

[#1]

(Text of H.R. 4740 plus letters—involves treating with Sioux Indians for cession of certain lands of the Rosebud Reservation)

[H.R. 4740, 56th Cong., 1st Sess. (1899)]

IN THE HOUSE OF REPRESENTATIVES.

December 19, 1899.

Mr. Gamble introduced the following bill; which was referred to the Committee on Indian Affairs and ordered to be printed.

A BILL

Authorizing the cession of certain Sioux Indian land.
1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress*
3 *assembled,*
4 That the Secretary of the Interior be, and he is hereby,
5 au-
6 thorized and directed to appoint a commission of three
7 mem-
8 bers to treat with the Sioux Indians within the Rosebud
9 Reservation, in the State of South Dakota, for the
10 cession to
11 the United States Government of all Indian land in
12 Gregory
13 County, South Dakota.

Land.
4450-1900

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS
Washington, February 8, 1900.

The Honorable

The Secretary of the Interior.

Sir:

I have the honor to be in receipt, by reference from the Acting Secretary of the Interior, for consideration, report and recommendation, of a letter dated January 17, 1900, from Hon. Robert J. Gamble enclosing a copy of H.R. 4740, 56th Congress, 1st Session, which provides as follows:

"Be it enacted, &c: That the Secretary of the Interior be, and he is hereby, authorized and directed to appoint a commission of three members to treat with the Sioux Indians within the Rosebud Reservation, in the State of South Dakota, for the cession to the United States government of all Indian land in Gregory County, South Dakota".

In submitting the aforesaid bill Mr. Gamble states that Gregory County was organized by the Governor of South Dakota about two years ago; that a large part of the county is covered by the Rosebud reservation, the portion open to settlement being so limited that it is difficult to maintain the county organization; that the part of the county open to settlement is largely occupied by settlers who are very anxious to have the government take action looking to the cession of that portion of the county within the limits of the Rosebud reservation; that he does not understand any particular number of

allotments have been made to the Indians within the limits of the county; and that inasmuch as it would be a great benefit to that portion of the State and to its people he would be glad to have the measure meet with the approval of the Department.

Respecting this bill, I have the honor to state that the portion of the Rosebud reservation the cession of which it is proposed to secure constitutes the eastern portion of the reserve. It comprises about 21 townships or in the neighborhood of 480,000 acres of land. The office is informed that there are about 350 Indians residing on Ponca Creek within the limits of the proposed cession and that these Indians have made their selections for allotments.

Any agreement negotiated with the Indians of the Rosebud reservation for the cession of any of their lands would require the signatures of at least three-fourths of the male adult Indians residing or belonging thereon (Article 12 of the treaty with the Sioux Indians dated April 29, 1868—15 Stats., page 639). If the consent of three-fourths of the male adult Indians can be obtained to an agreement ceding that portion of their reservation proposed by the aforesaid bill, the office would not be disposed to oppose its ratification.

It is suggested, however, that in the event of legislation authorizing such negotiations as proposed by this bill the same be amended by providing for conducting such negotiations through a United States Indian Inspector instead of having a commission appointed consisting of three members to negotiate such agreement. It is believed that more satisfactory results would be obtained by having an Inspector conduct such negotiations and the expense incurred in connection therewith in the latter case would only be nominal.

I would therefore recommend that if such legislation is had as the aforesaid bill proposes, the same be amended so as to provide for negotiations through an Indian Inspector.

The letter of Mr. Gamble, with the enclosed bill, is returned herewith, and I enclose a copy of this report.

Very respectfully,
Your obedient servant,
W.A. Jones,
Commissioner.

(J.R.W.)
P.

Land
7210-1900.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 9, 1900.

The Honorable,

The Secretary of the Interior.

Sir:-

Referring to the reference on the 7th instant to this office by the Acting Secretary of the Interior of a letter by Hon. J. S. Sherman dated February 5, 1900, enclosing certain H.R. Bills for reports thereon, among which is included *No. 4740, 56th Congress, 1st. Session*, authorizing negotiations with the Indians of the Rosebud Reservation, South Dakota, for that portion of their reservation situated in Gregory County, I have the honor to invite attention to office report of the 7th instant upon said

bill, the same having been referred to this office by the Department for that purpose, with a letter dated January 17, 1900, by Hon. R. J. Gamble, who introduced the same. A copy of said report is enclosed herewith.

The said bill is returned herewith. I also enclose copy of this letter.

Very respectfully,
Your obedient servant,
W. A. Jones,
Commissioner.

J.R.W.
C

DEPARTMENT OF THE INTERIOR,
Washington, February 13, 1900.

COPY.

Hon. Robert J. Gamble,
House of Representatives.

Sir:-

I have the honor to acknowledge the receipt of your letter of the 17th ultimo, and accompanying H.R. 4740, "A Bill authorizing the cession of certain Sioux Indian lands."

This bill authorizes the Secretary of the Interior to appoint a Commission of three members to treat with the Rosebud Sioux Indians for cession to the United States Government of all lands in Gregory County, South Dakota.

In response thereto I transmit, herewith a copy of a communication of the 8th instant, from the Commis-

sioner of Indian Affairs, in which recommendation is made that if such legislation is had as this bill proposes, that the same be amended so as to provide for negotiations through an Indian Inspector.

I approve of the recommendation of the Commissioner.

Very respectfully,
Secretary.

421, Ind. Div. 1900.

1004, " " "

1 inclosure.

M.E.W.

DEPARTMENT OF THE INTERIOR,
Washington, February 13, 1900.

The Chairman of the
Committee on Indian Affairs,
House of Representatives,

Sir:-

I have the honor to acknowledge the receipt of your letter of the 5th instant, and accompanying H.R. 4740, "A Bill authorizing the cession of certain Sioux Indian land."

In response thereto, you are advised that under date of the 17th ultimo, H.R. 4740 was transmitted to the Department for favorable consideration by Mr. Gamble, House of Representatives, and your attention is respect-

fully invited to the correspondence had with him in the matter, copies herewith.

Very respectfully,
/s/E. A. Hitchcock
Secretary.

819, Ind. Div. 1900.

1005, " " "

3 inclosures.

M.E.W.

[#1A]

(Legislative History of H.R. 4740)

[33 Cong. Rec. 380 (1899)]

Sioux:

* * *

_____bills to provide for cession to United States of
certain lands of (see bills S. 1767; H.R. 4740)

[33 Cong. Rec. 291 (1899)]

H.R. 4740—

Authorizing the cession of certain Sioux Indian land.
Introduced by Mr. Gamble and referred to Committee
on Indian Affairs 594.—Reported back with
amendment (H.R. Report 486) 2520.

[33 Cong. Rec. 594 (1899)]

By Mr. GAMBLE: A bill (H.R. 4740) authorizing the
cession of certain Sioux Indian land—to the Committee
on Indian Affairs.

[33 Cong. Rec. 2521 (1900)]

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, Mr. GAMBLE, from the
Committee on Indian Affairs, to which was referred the

bill of the House (H.R. 4740) authorizing the cession of
certain Sioux Indian land, reported the same with
amendment, accompanied by a report (No. 486); which
said bill and report were referred to the House Calendar.

[#1B]

(House of Representatives Report to accompany
H.R. 4740)

[H.R. Rep. No. 486, 56th Cong., 1st Sess. (1900)]

CESSION OF CERTAIN SIOUX INDIAN LAND.

March 3, 1900.—Referred to the House Calendar and
ordered to be printed.

Mr. GAMBLE, from the Committee on Indian Affairs,
submitted the following

R E P O R T.

[To accompany H.R. 4740.]

The Committee on Indian Affairs, to whom was
referred the bill (H.R. 4740) authorizing the cession of
certain Sioux Indian land, having had the same under
advisement, make the following report, and recommend
that the bill do pass with the following amendments:

Strike out the following words where the same appear
in lines 4 and 5, "commission of three members to," and
insert in lieu thereof the following: "United States Indian
inspector to negotiate and."

Strike out the word "cession," where the same appears
in line 6, and insert in lieu thereof the following words:
"purchase and release."

Insert after the word "all," where the same appears in
line 7, the following word: "unallotted."

Insert after the word "land," where the same appears
in line 7, the following words: "belonging to said tribe."

The measure has the indorsement of the Interior
Department, and letters to that effect are herewith
submitted from the Secretary and Commissioner of
Indian Affairs and made a part of this report.

The lands now open to settlement within the limits of
Gregory County are limited in area. In the year 1898 the
county government was organized. Although most of the
lands open to settlement are occupied, the territory is so
limited and the population so few in number the burdens
of local government are too onerous to be borne with
advantage to the community. The people are anxious that
this particular part of the reservation be opened and
opportunity given for settlement and development of
that region of the State. It would add a larger population,
increase the wealth and production, and relieve the
burdens of necessary and legitimate taxation.

The committee is informed the Indians are willing to
treat for a cession of the lands in question. To do so
would be carrying out the policy of the Government in
this particular and in harmony with treaty stipulations
and the provisions of the law of 1889, in the opening to
settlement of the ceded portions of the Great Sioux
Reservation. Those Indians have made their selection for
allotments, and this bill only relates to the surplus lands
of the reservation which are not used and unnecessary to
the support and maintenance of the tribe. The Indians
have their full allotments, and they are ample for their
use. By opening the lands to occupation and development
it would inure to the benefit of the people, the
community, the State, and to the Indians themselves.

DEPARTMENT OF THE INTERIOR

Washington, February 13, 1900.

SIR: I have the honor to acknowledge the receipt of your letter of the 17th ultimo, and accompanying H.R. 4740, "A bill authorizing the cession of certain Sioux Indian lands."

This bill authorizes the Secretary of the Interior to appoint a commission of three members to treat with the Rosebud Sioux Indians for cession to the United States Government of all lands in Gregory County, S. Dak.

In response thereto I transmit herewith a copy of a communication of the 8th instant from the Commissioner of Indian Affairs, in which recommendation is made that if such legislation is had as this bill proposes, that the same be amended so as to provide for negotiations through an Indian inspector.

I approve of the recommendation of the Commissioner.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

Hon. Robert J. Gamble,

House of Representatives.

DEPARTMENT OF THE INTERIOR,

Office of Indian Affairs,

Washington, Feb. 8, 1900.

SIR: I have the honor to be in receipt, by reference from the Acting Secretary of the Interior, for consideration, report, and recommendation, of a letter, dated January 17, 1900, from Hon. Robert J. Gamble, inclosing a copy of House bill No. 4740, Fifty-sixth Congress, first session, which provides as follows:

"Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and directed to appoint a commission of three members to treat with the Sioux Indians within the Rosebud Reservation, in the State of South Dakota, for the cession to the United States Government of all Indian land in Gregory County, South Dakota."

In submitting the aforesaid bill Mr. Gamble states that Gregory County was organized by the governor of South Dakota about two years ago; that a large part of the county is covered by the Rosebud Reservation, the portion open to settlement being so limited that it is difficult to maintain the county organization; that the part of the county open to settlement is largely occupied by settlers who are very anxious to have the Government take action looking to the cession of that portion of the county within the limits of the Rosebud Reservation; that he does not understand any particular number of allotments have been made to the Indians within the limits of the county; and that, inasmuch as it would be a great benefit to that portion of the State and to its people, he would be glad to have the measure meet with the approval of the Department.

Respecting this bill, I have the honor to state that the portion of the Rosebud Reservation, the cession of which it is proposed to secure, constitutes the eastern portion of the reserve. It comprises about 21 townships, or in the neighborhood of 480,000 acres of land. The office is informed that there are about 350 Indians residing on Ponca Creek within the limits of the proposed cession, and that these Indians have made their selections for allotments.

Any agreement negotiated with the Indians of the Rosebud Reservation for the cession of any of their lands would require the signatures of at least three-fourths of

the male adult Indians residing or belonging thereon (article 12 of the treaty with the Sioux Indians, dated April 29, 1868, 15 Stats., p. 639). If the consent of three-fourths of the male adult Indians can be obtained to an agreement ceding that portion of their reservation proposed by the aforesaid bill, the office would not be disposed to oppose its ratification.

It is suggested, however, that in the event of legislation, authorizing such negotiations as proposed by this bill the same be amended by providing for conducting such negotiations through a United States Indian inspector instead of having a commission appointed, consisting of three members, to negotiate such agreement. It is believed that more satisfactory results would be obtained by having an inspector conduct such negotiations, and the expense incurred in connection therewith in the latter case would only be nominal.

I would therefore recommend that if such legislation is had as the aforesaid bill proposes, the same be amended so as to provide for negotiations through an Indian inspector.

The letter of Mr. Gamble, with the inclosed bill, is returned herewith, and I inclose a copy of this report.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner*.

The Secretary of the Interior.

[#2]

(Legislative history of S. 1767, 56th Cong., 1st. Sess. (1899); the Senate companion bill of H.R. 4740 involving treating with Sioux Indians for cession of certain lands of the Rosebud Reservation.)

[33 Cong. Rec. 380 (1899)]

Sioux:

* * *

_____bills to provide for cession to United States of certain lands of (see bills S. 1767; H.R. 4740).

[33 Cong. Rec. 54 (1899)]

S. 1767—

Authorizing the cession of certain Sioux Indian land.
Introduced by Mr. Pettigrew and referred to Committee on Indian Affairs 561.

[33 Cong. Rec. 561 (1899)]

Mr. PETTIGREW

* * *

He also introduced a bill (S. 1767) authorizing the cession of certain Sioux Indian land; which was read twice by its title, and referred to the Committee on Indian Affairs.

[#3]

(Memorial of South Dakota legislature petitioning Congress to treat with Indians for cession of portion of Rosebud Reservation.)

[34 Cong. Rec. 152 (1901)]

Rosebud Reservation: memorial of legislature of South Dakota to restore to public domain portion of 3556.

[34 Cong. Rec. 3556 (1901)]

MEMORIAL.

Mr. KYLE presented the following joint resolution of the legislature of South Dakota; which was ordered to lie on the table, and to be printed in the Record:

STATE OF SOUTH DAKOTA, DEPARTMENT OF STATE.
UNITED STATES OF AMERICA,

State of South Dakota, Secretary's Office:

I, O.C. Berg, secretary of state of the State of South Dakota, do hereby certify that the attached instrument of writing is a true and correct copy of joint resolution No. 6, as passed by the seventh legislative assembly of South Dakota, as the same appears of record in this office and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of South Dakota. Done at the city of Pierre this 27th day of February, 1901.

[SEAL.] O. C. BERG, *Secretary of State.*
House joint resolution No. 6.—A joint resolution and memorial requesting the Congress of the United States to treat with the Indians for the cession and opening for white settlement and free homestead entry all that portion of the Rosebud

Indian Reservation lying within the boundaries of Gregory County, S. Dak.

Be it resolved by the house of representatives of the legislature of South Dakota (the Senate concurring):

Whereas there is in the organized portion of Gregory County, S. Dak., about six Congressional townships, said tract being too small in area, population, and assessed valuation to successfully maintain a county government without causing such government to become unduly burdensome; and

Whereas there is also within the boundaries of said Gregory County, S. Dak., about 23 Congressional townships of agricultural land which forms a part of the Rosebud Indian Reservation, and upon which are living a few Indians who have all taken their allotments in severalty; and

Whereas it is understood that the Indians are willing for a reasonable compensation to cede all that portion of the reservation herein mentioned to the Government; and

Whereas the ceding of said portion of the reservation to the Government would still leave a sufficiently large and suitable territory to meet all the requirements of an Indian reservation, while at the same time the ceding and opening to white settlers of all that portion of said reservation above referred to would add to the productive farming land of the State, enlarge the area of Gregory County to a proper and desirable size, and greatly lessen the expense of maintaining the government of said county: Therefore, be it

Resolved, That we respectfully petition and memorialize the Congress of the United States to treat with the Indians at the earliest practicable date for the cession of all that portion of the Rosebud Indian Reservation lying within the boundaries of Gregory County, S. Dak., and that said tract be open to free

homestead entry by white settlers; and be it further *Resolved*, That we hereby request our Senators and Representatives in Congress to use their best efforts to effect the object prayed for in this memorial; and the secretary of state is hereby instructed to forward copies of this memorial to our Senators and Representatives in Congress.

[#4]

(March 19, 1901, letters to Secretary of Interior and Indian Inspector J. McLaughlin from W. A. Jones, Commissioner of Indian Affairs concerning negotiations with Sioux for cession of portion of the Rosebud Reservation.)

Land
14,319-1901,

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
Washington, March 19, 1901,

The Honorable

The Secretary of the Interior,
Sir:

The office has the honor to acknowledge the receipt, by your reference of March 14, 1901, of a letter dated March 8, 1901, from Hon. R.J. Gamble, requesting that prompt action be taken in the matter of negotiating with the Indians of the Rosebud reservation for the cession of that portion of their lands in Gregory County, South Dakota. Senator Gamble invites attention to the provision contained in the Indian Appropriation Act for the coming fiscal year, approved on the third instant, authorizing such negotiations with any Indian tribe through a United States Indian Inspector, and encloses a copy of a Joint Resolution by the 7th Legislative Assembly of South Dakota, memorializing the Congress of the United States to treat with the Indians named for the cession of the lands indicated, to the United States.

In accordance with your directions the office has prepared and transmits, herewith, a draught of instructins for the guidance of the U.S. Indian Inspector in conducting the proposed negotiations. Attention is invited to the fact that the provision of law authorizing these negotia-

tions makes no appropriation for the purpose of paying any proper expenses incurred in connection therewith. It therefore becomes necessary to call upon the U.S. Indian Agent for said Indians to afford the Inspector such assistance as he may require in the conduct of the work. If, therefore, you will advise the office what Inspector is designated for this duty and when he will be likely to reach the Rosebud reservation, the office will give Agent McChesney proper instructions in the premises.

Very respectfully,
Your obedient servant,

/s/ W. A. Jones
Commissioner.

(J.R.W.)
P.

OFFICE OF INDIAN AFFAIRS,
DEPARTMENT OF THE INTERIOR,
WASHINGTON,

March 19, 1901.

U.S. Indian Inspector
Sir:

The Indian Appropriation Act for the next fiscal year, approved March 3, 1901, (Public No. 137), contains the following provision respecting negotiations with Indian tribes for the cession of lands:

"That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to negotiate, through any United States Indian Inspector, agree-

ments with any Indians for the cession to the United States of portions of their respective reservations or surplus unallotted lands, any agreements thus negotiated to be subject to subsequent ratification by Congress".

In connection with the foregoing provision the Department has concluded to authorize negotiations with the Indians of the Rosebud reservation, in South Dakota, for the cession of the unallotted eastern portion of their reserve, as hereinafter indicated. There are, it is understood, some desirable agricultural lands in that portion of the reserve and the proposition to secure the cession of the unallotted portion thereof was first suggested during the first session of the 56th Congress, when bills providing for authority to negotiate for the cession of that portion of the reserve embraced in Gregory County were introduced in Congress. The particular reason put forward for such action was that the larger portion of said county was embraced in the Indian reservation and that the remainder of the county supported so small a population it was difficult to maintain the county organization.

The bills referred to were not, however, enacted into law.

Since the enactment of the provision above quoted Hon. R. J. Gamble has invited the attention of the Department thereto, and has requested that negotiations for the cession of that portion of the Rosebud reserve included in Gregory County be had at an early day in order that an agreement may be secured and presented to Congress for its action at the opening of its next session.

The western boundary of Gregory County, as shown by the maps of South Dakota, is the range line between ranges 73 and 74. The portion of the reserve embraced in said county is as nearly as can be estimated about 21

townships or 480,000 acres. The north line of Gregory County is the township line between townships 99 and 100 north. A further examination of the map will show that in order to preserve the regularity of the reservation boundary in the event that a cession is made the townships east of the west boundary line of Gregory County in township 100, to wit., fractional township, range 71 and townships, ranges 72 and 73 lying in Lyman County, should also be ceded. The last named townships embrace an additional area of nearly 50,000 acres, thus making the total area of the tract proposed to be ceded about 530,000 acres—including allotted lands.

The records of the Indian Office at the present time show that 423 allotments in severalty have been made to the Indians within the portion of the reservation in question. The larger portion of these are along Ponca Creek and especially in township 95 north, ranges 69, 70 and 71 west. Whether allotments have been made to all of the Indians in the Ponca Creek district the Department is not informed, but it is presumed that nearly all of the Indians have been so allotted. Heretofore where cessions of portions of Indian reservations have been made by Indians who had not yet received their allotments in severalty, it has been the practice to insert in the agreement a provision to the effect that any Indians having homes and improvements within the ceded portion might elect to remove to the diminished reservation—the improvements to be sold for their benefit, or removed as they might choose. In the present instance however allotments in severalty to the Indians residing within the district under consideration have been formally made in accordance with the general plan or policy of the Department, and for this reason a general removal of the allotted Indians in that district would not be favored. It is understood that most of the lands allotted

in that district are of excellent quality—better no doubt than could now be procured for the purpose on the diminished reservation. Another consideration is that such removal, if permitted, would, as shown by former experiences of the Indian Department in similar cases tend to keep the Indians affected in an unsettled state for some time to come.

This feature of the matter and the views of the Department in regard to it should be fully explained to the Indians assembled in council and especially to those immediately concerned. It should be made perfectly clear to them that in the event of the cession of their surplus lands the same will be opened up to public settlement and they will be brought into immediate contact with the whites.

The consideration to be paid the Indians for the surplus lands in question should be a fixed, definite, lump sum. It is impossible for the Department to indicate the price to be paid. It should however be just and fair both to the Indians and to the United States. In fixing upon the price you should not lose sight of the fact that no doubt a great deal of the choicest land within the district named has been allotted, leaving the less desirable portions. In the agreement made with the Rosebud Indians on March 10, 1898, providing for the location of certain Lower Brule Indians upon the Rosebud reservation the consideration was fixed at \$1.25 per acre for lands actually required as allotments for such Lower Brules. This of course contemplated the selection of the choicer lands and cannot, it is thought, be taken as an index in determining the price to be paid for the surplus lands now under consideration.

The total area of the allotments in the Ponca Creek district, so far as the records of the Indian Office show is approximately 97,600 acres. Deducting this—from the

estimated total area of 530,000 acres leaves a surplus of 432,400 acres. In this connection it is suggested that Special Allotting Agent Winder be called upon for information as to any additional allotments within said district not yet reported to the Indian Office and the area of the same in order that proper deduction may be made. In the agreement concluded, if any, provision should be made for allotments to any other Indians within said district who may request the same, and for these proper deduction should also be made.

Respecting the disposition to be made of the proceeds arising from the proposed cession, if any be effected, the Department feels that this is a subject requiring most careful and earnest consideration on your part. From ample experience the Department is convinced that cash annuities and the issuance of rations for any extended period of years to Indians is most detrimental to their present and future welfare. Idleness and lack of self dependence are fostered by the ration and annuity systems, and it is believed that they are one of the great drawbacks to the progress of Indian tribes toward civilization. Any provisions, therefore, in the agreement with the Rosebuds which would enable them to live without putting forth at least as great effort as at present to gain a livelihood, would be regarded, necessarily, as a backward step. The Sioux Indians, as a tribe, especially, have the lesson of industry and self dependence yet to learn. The Rosebud Indians in the completion of their allotments in severalty are now entering upon a new era in their tribal history, and it is most important that their future needs under the changed conditions likely to ensue from their having received such allotments, should be most carefully considered.

The special needs of the Rosebuds should therefore be inquired into. Their Indian Agent should also be con-

sulted. A plan for the disposition of the proceeds should be formulated that will tend to promote the welfare of the Indians and start them on the road to civilization and self support. Stock cattle, it is suggested, should be purchased with a portion of the proceeds. The question of irrigation should also be inquired into and if irrigation be practicable on the reservation provision therefor should be made. The educational needs of the Indians should receive attention, and if any additional facilities are required they should be provided for. The question of providing for the construction of houses and the purchase of additional farm implements, wagons, harness, etc., should also be looked into, and if needed, provision therefor should be made. But the agreement should not provide for the payment of any large sum or sums to the Indians in cash.

As above indicated, the proposition for the cession of the surplus lands in question did not come from the Indians themselves. No undue pressure should therefore be brought to bear upon them to enter into an agreement. If, after assembling them in council, and after fully explaining to them the purpose of the same, they should refuse to cede the lands referred to, you should report the fact fully to the Department. If, however, an agreement is concluded, the same must be executed in proper form for acceptance and ratification by Congress, and it should contain a provision to the effect that it must be so ratified in order to make it valid. In this connection attention is invited to Article 12 of the Sioux treaty of April 29, 1868, (15 Stats., 635), which provides that no treaty for the cession of lands with said Indians shall be valid unless executed and signed by *at least three-fourths* of all the adult male Indians occupying or interested in the same. Should the signatures of three-fourths of the adult male Indians be procured, a

certificate by the U.S. Indian Agent should be attached giving the total number of Indians of the reservation entitled to sign and stating that those who have signed constitute at least three-fourths or more.

The minutes of all the council proceedings should accompany the report of your actions to the Department under these instructions, whether an agreement is executed or not.

The act under which these negotiations are to be conducted, it will be observed, carries with it no appropriation out of which to defray expenses and the Department has no general fund available out of which it can pay any such expenses. Proper instructions will be given to the Indian Agent, therefore, to co-operate with and assist you so far as he is able in conducting the proposed negotiations and to afford you such help as you may require.

Should there be any points upon which you desire further information or instructions you should promptly advise the Department of the fact and request the same.

Very respectfully

/s/W. A. Jones
Commissioner

(J.R.W.)
P.

Approved
Secretary.

[#5]

(Legislative history of S. 2992, 57th Cong., 1st Sess. (1902)—a bill to ratify an agreement with Sioux Indians for cession of certain lands of the Rosebud Reservation.)

[35 Cong. Rec. 377 (1901-1902)]

Rosebud Reservation bills to ratify agreement with Indians on (see bills S. 2992, H.R. 9057)

- amendment in Senate to bill (S. 2992) to ratify agreement with Sioux Indians on 4855.
- letter of Secretary of Interior transmitting agreement with Indians on (S. Doc. 31) 206, 245, 1279.

[35 Cong. Rec. 81 (1901)]

S. 2992—

To ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect. Mr. Gamble: Committee on Indian Affairs 751.—Reported back with amendments (S. REPORT 662) 2477.—Passed over in Senate 2717, 2882, 3187, 3450, 3541, 3756, 4424.—Debated 4569, 4608, 4715, 4750, 4800, 4801, 4855, 4911, 4963, 4965, 5013, 5019.—Passed Senate 5024.—Referred to House Committee on Indian Affairs 5198.—Reported back with amendment (H.R. REPORT 2099) 5613.

[35 Cong. Rec. 751 (1902)]

Mr. GAMBLE introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Indian Affairs:

* * *

A bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect.

[35 Cong. Rec. 2477 (1902)]

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (S. 2992) to ratify an agreement with the Sioux tribes of Indians of the Rosebud Reservation in South Dakota, and making appropriations to carry the same into effect, reported it with amendments, and submitted a report thereon.

[35 Cong. Rec. 2717 (1902)]

AGREEMENT WITH SIOUX TRIBE.

The bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect, was announced as the next business in order.

Mr. PLATT of Connecticut. I shall desire to discuss this bill at a greater length than is allowed under the rule.

It is not a unanimous report of the Indian Affairs Committee. It involves the whole question of public policy about what we are going to do with these Indian reservations, and I shall desire to take some time in its discussion. I think the bill had better stand over, retaining its place on the Calendar.

The PRESIDENT pro tempore. The bill will be passed over, retaining its place on the Calendar.

[35 Cong. Rec. 2882 (1902)]

SIOUX TRIBE OF THE ROSEBUD RESERVATION.

The bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, was announced as next in order.

Mr. KEAN. I think the Senator from Connecticut [Mr. PLATT] is interested in the bill, and I suggest that it go over.

The PRESIDENT pro tempore. The bill will go over without prejudice.

[35 Cong. Rec. 3187-3188 (1902)]

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION

The bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, was considered as in Committee of the Whole.

The bill was reported from the Committee on Indian Affairs with amendments. The first amendment was, in section 3, on page 5, line 18, after the word "missions," to insert" and lands reserved for common schools as provided in section 4 of this act;" so as to read:

That the lands ceded to the United States under said agreement, excepting such tracts as may be reserved by the President, not exceeding 398 67/100 acres in all, for subissue station, Indian day school, 1 Catholic mission, and 2 Congregational missions, and lands reserved for common schools as provided in section 4 of this act, shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry.

The amendment was agreed to.

The next amendment was, at the end of the bill, to insert the following as a new section:

SEC. 4. That sections 16 and 36 of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved for the use of the common schools, and the same are hereby granted to the State of South Dakota for such purpose; and in case either of said sections, or parts thereof, of the lands in said county of Gregory is lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians now holding the same, or otherwise, the governor of said

State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied, in quantity equal to the loss, and such selection shall be made prior to the opening of such lands to settlement.

The amendment was agreed to.

Mr. PLATT of Connecticut. I move to amend the bill in section 3, on page 6, line 18, by striking out after the word "acre," down to and including the word "that" before the word "homestead," in line 25, and inserting the word "and" before the word "homestead."

The PRESIDENT pro tempore. The amendment proposed by the Senator from Connecticut will be stated.

The SECRETARY. In section 3, on page 6, line 18, after the word "acre," it is proposed to strike out:

But settlers under the homestead law, who shall reside upon and cultivate the land entered in good faith for the period required by existing law, shall be entitled to a patent for the lands so entered upon the payment to the local land officers of the usual and customary fee and commissions, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry, except that.

And insert "and," so as to read:

And provided further, That the price of said lands shall be \$2.50 per acre, and homestead settlers who commute their entries under section 2301, Revised Statutes, shall pay for the land entered the price fixed herein.

Mr. GAMBLE: Mr. President, the bill submitted to the Senate for consideration was prepared by the Interior Department, and has its approval and indorsement. Two amendments were suggested to the bill by the Committee

on Indian Affairs, and they have already been adopted by the Senate. The amendment proposed by the Senator from Connecticut [Mr. PLATT] eliminates that provision in the bill in regard to the opening of the lands to free homes. These lands are situated in the southern part of South Dakota, west of the Missouri River, and adjoining the great Sioux Reservation. The Government agrees to pay the Indians \$2.50 per acre for the land proposed to be ceded. The lands affected by this agreement involve about 521,000 acres. Of that amount 105,000 acres have been allotted to 452 Indians, leaving, practically, 416,000 acres unallotted and to be thrown open to settlement under this agreement.

Under the provisions of the enabling act authorizing the admission of the State of South Dakota into the Union, sections 16 and 36 in every township were reserved for school purposes. This provision did not apply to permanent Indian reservations, but became operative when the Indian title was extinguished and the land restored to and became a part of the public domain, this would withdraw about 29,000 acres of these lands and would save 387,000 acres to be opened to settlement, and which would be affected by the proposed amendment.

Mr. President, we believe that the bill as reported by the committee should pass without the amendment submitted by the Senator from Connecticut. It has long been the policy of the Government to open the Western reservations to free homes. The homestead law enacted so many years ago certainly proved of inestimable value, not only to the West, but to the country at large. A different policy was inaugurated some ten or twelve years ago, under which, when reservations were opened, the settler was obliged to pay the same price for the land that the Government paid the Indians for the relinquishment of their title.

Two years since a free-homes bill was passed by Congress after having been discussed at great length, especially in this body. It occurs to us that by that act the homestead policy has been reestablished by the Government. We do not believe it is wise now to reopen that question.

When the bill to open the Crow Reservation in Montana was recently under consideration in this body it passed without any opposition on the part of Senators; and it opened those lands to free homesteads, involving, I think, something like 1,000,000 acres. We believe that the same rule should be applied to the lands in South Dakota, and that this reservation should be opened in like manner.

Settlers who go upon these new lands to open and develop them necessarily meet severe and trying conditions. They are inaccessible and far removed from railway or other facilities of communication. The settlers are obliged to bear all the burdens incident to organizing and developing the local community. They are compelled to build highways and bridges, to erect schoolhouses, and maintain schools, the courts, and jails, and all the expenses of local government. Within the limits of the lands proposed to be opened to settlement there are upward of 450 Indian allottees, and the settlers who take these lands will be obliged to assume the responsibilities of the local community practically unaided by the Indians, and to bear largely all the responsibilities that heretofore have been borne by the General Government.

The Indians have selected the choicest and best lands along the streams, and the settlers who move in will be obliged to take the more undesirable lands.

I believe the men who settle upon this reservation and bear these responsibilities and who build up these new communities ought to have their lands at the same price

that was paid by other settlers upon adjacent lands of like character. I believe it is nothing more than an act of simple justice, considering the hardships they must endure and the responsibilities they must necessarily assume.

It is a question of policy, and I do not believe we should depart from the one heretofore adopted by the enactment of the free-homes law two years ago.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. STEWART. Mr. President, this question ought to be understood by the Senate.

Mr. PLATT of Connecticut. Will the Senator from Nevada permit me a moment, as I moved the amendment which is pending?

Mr. STEWART. I want to speak to that amendment.

Mr. PLATT of Connecticut. I wish to make a single suggestion.

Mr. STEWART. All right. I yield to the Senator.

Mr. PLATT of Connecticut. I had hoped that the Senator from South Dakota [Mr. GAMBLE] would accept the amendment, as the Senator from North Dakota [Mr. HANSBROUGH] accepted the amendment in relation to the bill opening up the Devils Lake Reservation, and I want to say now that if this amendment is to be opposed the bill can not be disposed of this morning.

Mr. STEWART. Mr. President, I wish to make merely a remark or two in order to call the attention of the Senate to the situation we are in. Although the Indians have no title, except the title of occupancy, the Government is bound to take care of them, and to see that justice is done them. For the most part we have submitted to the Indians the fixing of the price of the lands which we have purchased. As the land is settled, the Indians put up the

price according to the price of adjoining lands that are cultivated by white people. In this very case the committee had much doubt whether the land was worth \$2.50 an acre; but they finally consented to report the bill, because the Senator from South Dakota insisted that it would be detrimental and ruinous to the State of South Dakota to have settlement there tied up in this way, and that these lands ought to be opened.

If Congress should exercise the power to fix a reasonable price on the land we open, and pay the Indians for it, there would be no serious objection to free homesteads; but if the Indians are to fix an exorbitant price, the Government pay it, and then open the land to free homes, there would be great friction before we disposed of these millions of acres of land. This raises a very serious question. I was in hopes the Senators from South Dakota would avoid the question by adopting the same course which was adopted by the Senators from North Dakota as to the Devils Lake Reservation. They accepted a similar amendment to that bill, and the bill was passed. The Crow Reservation was also opened, and there was probably paid not more than half as much as it was worth in the market, and the Government will be fully reimbursed in that case.

A large portion of this particular reservation will not be worth very much, because it is not arable land. If the Government pays \$1.25 an acre for the land, and that is all the Indians ought to demand, then I should be in favor of opening it to free homesteads, but I am not in favor of paying the Indians a price which is fixed by the value of adjoining land held by white men, and then opening it to free homes, because before we get through with it we shall find that it will involve a vast amount of money.

I make these observations so that the situation may be understood by the Senate. If Congress adopts the policy

of fixing the price of land to be opened and not leave it to the Indians, then we can open it to free homesteads for such price as will be reasonable; but if we leave it to the Indians to fix the price, under the advice of white men around there, then it will become so extravagant that the scheme can not be carried out.

Mr. PLATT of Connecticut. Mr. President, as I remarked a moment ago, I did hope that the Senator from South Dakota [Mr. GAMBLE] would accept the amendment I have offered, which is the same as that placed in the bill opening the Devils Lake Indian Reservation a few days ago, which was accepted by the Senator from North Dakota [Mr. HANSBROUGH], who was interested in opening that reservation, and it was adopted by the Senate.

Manifestly we must have some policy with reference to the opening of these reservations. If the Senator from South Dakota insists on opposing this amendment, we can not discuss this question under the five-minute rule, and I shall be compelled to object to the further consideration of the bill this morning.

I want to say right here and now, however, that the State of South Dakota, as it seems to me, ought to be pretty well satisfied when we pay to the Indians \$2.50 an acre for this land and then give to the State of South Dakota two sections, amounting in value to something over \$75,000, which is a clean gift of so much money from the Government to the State of South Dakota, without any obligation whatever on the part of the Government to do so.

The Senator from South Dakota said that when the State of South Dakota was admitted to the Union there was a provision in the enabling act that two sections in each township should be reserved for school purposes. That is true, Mr. President; but there was also an express

proviso in that act that that reservation should not apply to any land which was then within an Indian reservation. So the amendment which has been already adopted is a clean gift to the State of South Dakota of \$2.50 an acre for all the lands embraced in those two sections in each township, which would amount, I think, to something about \$75,000, without pretending to be accurate about it.

Mr. President, this is a question which is very much larger and more far-reaching in its importance than the mere question of whether this bill is to pass in the form in which it was reported by the committee, or whether the amendment I have proposed shall be adopted. It is true that several years ago—more than ten years ago, I think—in opening Indian reservations, we paid large and extravagant prices for land to the Indians, upon the theory that the Government was going to be reimbursed for its expenditures by the settlers paying for the land which they settled upon a sufficient sum to reimburse the Government. That went on for years, and everybody supposed that that was acceptable to the settlers. Then the settlers began to agitate that the Government should remit to them the obligation which they had incurred to pay for the land, and thereby reimburse the Government; and the history of that agitation of course is well known. The Government remitted about \$35,000,000 which it had paid to the Indians and which the settlers had agreed to repay to the Government by the passage of that free-homes bill.

I well remember the argument here on that question. It started as to Oklahoma. The ground upon which it was put was not so much that the free-homes policy should be continued where we bought the lands from the Indians, but that this land was in the semi-arid region and it was impossible for the settlers to make the money on

the farms in that semiarid region to pay what they had agreed to pay. The argument was extended beyond Oklahoma to all the lands which had been thus opened to settlement. I do not wish to say, Mr. President, that the Government was imposed upon by that argument, but I do wish to say that since that free-homes bill passed you can not get any person in Oklahoma who will deny that the lands which were thus affected are worth \$20, \$25, and \$30 an acre. The school fund commissioners of Oklahoma, immediately after the passage of that act, reported to the Government that the lands belonging to the school fund in Oklahoma were worth, on an average, \$30 an acre.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. COCKRELL. It is manifest that we can not dispose of this bill under the five-minute rule or under the half-hour rule. So I think it will have to go to the other Calendar.

The PRESIDENT pro tempore. The Senator from Missouri objects to the further consideration of the bill.

Mr. GAMBLE. Will the bill go over without prejudice?

Mr. COCKRELL. It can not be discussed under the five-minute rule, and it is not worth while to keep it on the Calendar under the five-minute rule.

Mr. GAMBLE. Perhaps it might be passed without prejudice this morning.

Mr. COCKRELL. I have no objection to its being passed over without prejudice once.

The PRESIDENT pro tempore. The bill will be passed over without prejudice.

[35 Cong. Rec. 3450 (1902)]

The PRESIDENT pro tempore. * * *

The bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, was announced as next in order.

The PRESIDENT pro tempore. The bill has been read in full.

Mr. PLATT of Connecticut. This bill can not be disposed of under the five-minute rule. I am willing that it shall go over for to-day, keeping its place on the Calendar, but unless the amendment which I proposed is assented to it will have eventually to go over under Rule IX, when we can have a full discussion of it.

The PRESIDENT pro tempore. The bill will go over this morning, retaining its place.

Mr. PLATT of Connecticut. Yes.

[35 Cong. Rec. 3541 (1902)]

BILLS PASSED OVER.

The bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, was announced as next in order on the Calendar.

Mr. GAMBLE. I suggest that the bill be passed over without prejudice, retaining its place on the Calendar.

The PRESIDENT pro tempore. It will be passed over, retaining its place.

[35 Cong. Rec. 3756-3757 (1902)]

BILLS PASSED OVER.

Mr. HALE. Now, let us go on with the Calendar.

The PRESIDENT pro tempore. The Calendar under Rule VIII is in order. The first case on the Calendar will be announced.

The bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, was announced as next in order on the Calendar.

Mr. HALE. I object to the bill. Let it go to the Calendar under Rule IX.

The PRESIDENT pro tempore. The bill goes over and takes its place on the Calendar under Rule IX.

[35 Cong. Rec. 4424-4425 (1902)]

The PRESIDENT pro tempore. * * *

The bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect was announced as next in order.

Mr. PLATT of Connecticut. That is a bill which will create a good deal of discussion. I am quite anxious to accommodate the friends of the bill by having it taken up at some time when there can be more than a discussion under the five-minute rule. I think we shall be able to arrange such a time very soon, and it is agreed, I believe, that it may be passed over this morning.

Mr. McCUMBER. Retaining its place on the Calendar?

Mr. PLATT of Connecticut. Yes.

The PRESIDENT pro tempore. The bill will be passed over, retaining its place on the Calendar.

[35 Cong. Rec. 4569 (1902)]

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION.

Mr. PLATT of Connecticut. Before 2 o'clock arrives, I desire to ask for a unanimous-consent agreement, if I may do so at this time.

The PRESIDENT pro tempore. The Chair recognizes the Senator.

Mr. PLATT of Connecticut. The friends of the bill for opening the Rosebud Reservation are very anxious to have consideration of that bill. It has been objected to because it could not be discussed under the five-minute rule. I desire to move an amendment and to discuss the bill. I therefore ask unanimous consent that after the matter which was under consideration this morning shall be disposed of, that bill may be taken up after the routine business in the morning hour, and discussed without limitation as to time.

Mr. WARREN. Does the Senator from Connecticut ask that it be considered to-morrow, or at some later time than to-morrow?

Mr. PLATT of Connecticut. Whenever the matter which is now under discussion in the morning hour shall have been concluded.

Mr. WARREN. I merely call the Senator's attention to the fact that there is an agreement to go into executive session tomorrow immediately after the morning business.

Mr. PLATT of Connecticut. Well, whenever the opportunity shall occur after the consideration of the matter which has been under discussion this morning.

The PRESIDENT pro tempore. The Senator from Connecticut asks unanimous consent that the bill to which he refers may be taken up for consideration in the morning hour after the final disposition of the bill now under consideration in the morning hour, and that there shall be no limitation of the five-minute rule in the debate. Is there objection? The Chair hears none, and the order is made.

Mr. JONES of Arkansas. What is the bill?

Mr. PLATT of Connecticut. It is the bill relative to the opening of the Rosebud Reservation.

The PRESIDENT pro tempore. The number and title of the bill will be stated.

The SECRETARY. Order of Business 675, a bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect.

[35 Cong. Rec. 4608 (1902)]

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION.

The bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect was announced as first in order on the Calendar.

The PRESIDENT pro tempore. There has been an arrangement made in relation to this bill. It goes over without prejudice.

[35 Cong. Rec. 4715 (1902)]

BILLS PASSED OVER.

The PRESIDENT pro tempore. The Secretary will state the first case on the Calendar.

The bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, was announced as the first business in order on the Calendar.

Mr. PLATT of Connecticut. That has been made the subject of an agreement. It will therefore go over.

The PRESIDENT pro tempore. The bill goes over, retaining its place.

[35 Cong. Rec. 4750 (1902)]

INDIANS ON ROSEBUD RESERVATION, S. DAK.

Mr. PLATT of Connecticut. I have been anxious to accommodate my friend, the Senator from South Dakota [Mr. GAMBLE], by taking up a bill which stands first on the Calendar under Rule VIII. I do not think there is time to dispose of it this morning. I give notice that to-morrow morning, immediately after the routine business, I will ask the Senate to consider the bill.

Mr. CULLOM. What is the bill?

Mr. PLATT of Connecticut. It is the bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect.

[35 Cong. Rec. 4800-4807 (1902)]

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION.

Mr. PLATT of Connecticut. I ask that we may take up Senate bill 2992, the first bill on the Calendar under Rule VIII, and that the discussion may proceed without the five minutes' limitation.

The PRESIDENT pro tempore. The Senator from Connecticut asks that the Senate proceed to the consideration of the bill (S. 2292) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect, and that the debate upon the bill shall not be subject to the limitations of Rule VIII. Is there objection? The Chair hears none.

The Senate, as in Committee of the Whole, resumed the consideration of the bill.

The PRESIDENT pro tempore. The bill has been read in length as in Committee of the Whole.

Mr. GAMBLE. The amendment offered by the Senator from Connecticut [Mr. PLATT] is pending.

Mr. PLATT of Connecticut. When the bill was up before I proposed an amendment, which does not appear on the bill. I have not the amendment with me. If I could find the Record I would turn to it.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. In section 3, page 6, line 18, after the word "acre," strike out down to and including the word "that," is line 25, and insert the word "and;" so that the additional proviso, if amended, would read:

And provided further, That the price of said lands shall be \$2.50 per acre and homestead settlers,

who commute their entries under section 23 of the Revised Statutes, shall pay for the land entered the price fixed herein.

Mr. PLATT of Connecticut. At the request of the Senator from North Dakota [Mr. McCUMBER], I yield to him for a few moments.

* * *

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect.

Mr. PLATT of Connecticut. Mr. President, this bill and the amendment which I have proposed to it present a very serious question of our public policy. I regret that other matters have so engrossed my attention that I am not particularly prepared to present the question which is thus raised. I may say in the outset that the question involved here means a great many millions of Government expenditure if it should be decided in one way, and it incidentally affects our whole Indian policy.

This is a bill for the opening of the Rosebud Reservation in South Dakota. I do not remember at this time the exact number of acres which are thus to be opened by the bill, but the price to be paid to the Indians is something over a million dollars. The question is whether the Government, in opening the lands to settlement, shall give the lands thus purchased from the Indians to the settlers under the homestead law, or whether it shall require the settlers who take up these

lands under the homestead law to pay for them a sum per acre equivalent to what the Government pays the Indians for them. In other words, in opening the Indian reservations which already remain, what is to be the policy of the Government? Are we to pay the Indians a high price for the lands which we obtain a cession of, and then give those lands to settlers free of cost, or shall we require the settlers to pay as much for the lands as will make up wholly for the amount which we have paid for them? That is the question, and Senators will see that it is a far-reaching question.

I do not know how many million acres still remain in Indian reservations which must in the future be opened to public settlement, but there are many millions, and, at the rate we have been paying the Indians under the agreements made with them for such lands, the amount to be expended in the not very distant future will run up into the millions. At a rough calculation I would say that probably the Government in opening the reservations already existing and paying the Indians for the lands at the rate which we have been paying under the agreements negotiated with them will expend somewhere in the neighborhood of \$50,000,000. That may be over or under the mark, but approximately and for the purpose of presenting this question it may be assumed as a fair statement.

Now, shall the Government pay these millions of dollars to acquire the Indian title and give away the lands to the settlers, or is it but just that if settlers require these lands they shall pay for them per acre the same which the Government pays to the Indians?

It has seemed to me, Mr. President, that there is no injustice whatever in asking a settler who may go upon the lands thus acquired from the Indians to pay for them what the Government pays the Indians. I am not satisfied

that the Government has been doing the right thing in paying to the Indians the high prices which it has agreed to pay for the lands thus acquired. Of course, the Indian title is an occupancy title; it is not a title in fee. The title to these lands is in the Government of the United States, subject to whatever rights the Indians have, whether by treaty or otherwise, to hold the lands so long as they remain a tribe and occupy them. There is no question about the nature of the title. If the Indian tribe became extinguished or ceased to occupy the lands they would be Government lands and belong to the public domain.

Now, it seems to me that in negotiating with the Indians for the cession of their reservations the Government ought not to pay them what those lands are worth in fee, or indeed anything approaching it, but that they should be negotiated with upon the theory that their title is worth what the lands are worth for their occupation and without reference to the enhanced value which has come to be put upon the lands in fee on account of the settlement of the country surrounding the Indian reservations. But another policy seems to have prevailed.

Of course it goes without saying that where there is an Indian reservation all the settlers upon the public lands in the vicinity of that reservation are anxious to acquire the lands which are not needed by the Indians, and so there is a pressure that each Indian should have an allotment of lands of 160 acres, or as the case may be, and that then the remaining lands should be open for settlement. That pressure is very great. It presses upon every Indian reservation. The reservations are now within the States largely. The State of South Dakota has, I think, something like 8,000,000 acres of land still contained in Indian reservations, and in other States and in the Territories there are other quantities of land in reservations.

Now, the pressure for the opening of this land is great. I do not think anyone who does not live in the vicinity of those reservations understands how great it is. Therefore, it is insisted that the Interior Department shall negotiate with the Indians for the opening of the reservations, and a bill passes here without any consideration at all directing that the Secretary of the Interior shall negotiate with this or that tribe of Indians for an agreement for the allotment of their lands and the ceding of their surplus lands to the United States, and a commission goes there for that purpose.

Indeed, we have a general bill which has been passed without much consideration providing that the Interior Department may send an inspector to negotiate with the Indians for the opening of the surplus lands of the reservations to settlement, and then the settlers and Senators representing the inhabitants of the States press the Interior Department to hurry up the negotiations, and a commission or an inspector is sent out to negotiate with the Indians, the result of which is that the Indians say, "Why, these lands are worth five, ten, fifteen, twenty dollars an acre. Look over there, just on the other side of our reservation, you can not buy any lands for less than that sum, and we must have what the lands are worth." Then the inspector or the commission feeling that an agreement must be made, negotiate as well as they can with the Indians, and when they get them down to the lowest price it is accepted, and an agreement is sent here to be ratified.

Now, this particular agreement comes here to be ratified upon a payment to the Indians of about \$2.50 an acre for the surplus lands within their reservation which are under the agreement to be ceded to the United States and become part of the public domain. The Indians in negotiating said that was not a fair price for the lands and

they were worth a great deal more, but finally the negotiation was concluded. The agreement comes here. So far as the Senate considers it, it is an agreement to open a reservation—to pass ordinarily without any particular examination or any thought of the consequences to the Government in the matter of expense. I will not go into the history of the negotiations as to these lands, but the price paid or agreed to be paid to the Indians is \$2.50 an acre for the entire acreage which is to be brought under the public domain by cession to the United States.

The bill proposes that the land thus acquired shall be open to homestead settlement without requiring any payment for the land settled upon from the settler. My amendment proposes that the settler shall pay \$2.50 an acre, being the same which the Government has agreed to pay to the Indians, and that thus the Government shall be reimbursed for the amount expended for the purchase.

Mr. President, this is said to be in opposition to a policy of the Government supposed to have been declared when we passed last year what was known as the free-homes bill, and that opens a large question. Before I come to that, however, I wish to say that we have already passed two bills in the Senate in which there was incorporated a provision that the settlers should pay to the Government for the land settled upon a sum equivalent to that which had been paid by the Government to the Indians for opening the reservations. The Devils Lake Reservation was one of them, at \$3.50 an acre, and the other, which was passed on the motion of the Senator from Minnesota [Mr. CLAPP] the other day, was the Red Lake Reservation, at \$3.90 an acre.

The Senate has, then, in the passage of those two bills adopted the principle which I ask to have adopted on this amendment. It is but fair to say that it has passed one bill, for the opening of the Crow Creek Reservation, in

which no such provision has been made. If Senators ever remember what other Senators have said they would remember that when that bill was under consideration I called attention to it, but under the circumstances, I did not at that time propose such an amendment as I have proposed to the pending bill.

Now, coming to the question whether by the passage originally of the homestead act and by what has been more recently known as the free-homes bill we are bound to buy lands from the Indians for settlement and then give those lands to the settlers or not, I have some observations to make upon that subject. I can not see what obligation there is upon the Government on account either of the homestead act or the free-homes bill to continue the policy of buying lands from the Indians to give to settlers any more than to buy them from citizens of the United States to give to settlers.

I can not see why we should spend a million dollars to buy Indian land and then give it as a free gift to anybody who chose to settle upon it any more than we should spend a million dollars to buy the farms of citizens in Connecticut and South Dakota or in any other State and give those lands to people who desire to settle upon them. I can not see how in South Dakota we should buy lands from Indians on a reservation, paying a million dollars for them, and then give away those lands to settlers any more than we should pay a million dollars to people residing just off the reservation for the purchase of their farms and give the land they acquired to people who desire to settle upon it. Neither the homestead law nor the free-homes bill commits the Government to any such policy as that.

Now, we go back to the homestead law. At the time the homestead law was passed we certainly had not been buying lands for the purpose of giving them away to

settlers. Certainly that had not been the policy of the Government up to that time. We had been extinguishing Indian titles in the West at a very moderate price, sometimes as low as 5 cents an acre and even less. We had been extinguishing the Indian title until we had acquired a vast domain of public land which was then being sold.

I do not know that I can state exactly what the old laws were, but up to the time of the passage of the homestead act the Government had been selling lands or offering them for sale at a specified price, and if the price was not obtained opening them under what is called the preemption laws, allowing people to enter upon them. Up to the time of the passage of the homestead act we had certainly not been buying lands to give away. Neither did we do it under the homestead act. We had the lands. They had been acquired, not for the purpose of immediate settlement, but for the purpose of extinguishing the Indian title and holding the lands as a part of the public domain.

Then came the agitation of the proposed homestead law, and it passed. It dealt with and had reference to a great bulk of public land which we had thus acquired, which under our policy of sale had not netted the Government as much as it ought to have done, and in regard to which there had been great frauds and speculators had acquired large portions of the public domain without paying any very adequate price for them.

Then the homestead act was passed, and the lands were taken up under the homestead laws, which required a settler in order to obtain final title to his land to live upon it and cultivate it for five years or to commute it at a specified rate. That policy was continued from 1862 up to 1880. I do not think that during all that time it can be said that any lands were bought of the Indians for the purpose of immediate settlement.

But in 1880 there were a large number of Indians roaming over the State of Colorado. The bands of the Confederated Ute Indians were occupying very large portions of the State and negotiations were had with those Indians by which they agreed, without going into particulars, to surrender their claim—their title to lands in the State of Colorado—and to remove southward into Utah and elsewhere, under an act of Congress, by the terms of which the lands thus surrendered by the Indians should be sold and the Indians paid for them at the rate of \$1.25 an acre, and that the settlers, when they took the lands, should pay \$1.25 an acre to the Government.

That, to my mind, changed the policy of the Government, and we adopted a new policy; that is, that when we bought lands from the Indians and opened them to settlement, we would require the settlers to pay the Government for them as much as the Government had paid to the Indians. Colorado has been settled under that act, and the settlers have paid \$1.25 an acre for the land, and that money has been passed over to the Confederated bands of Ute Indians. That policy continued up to the time of the opening of public lands in Oklahoma and in South Dakota. We were forward, and we paid the Indians large prices for their lands.

It will be remembered that as to the Cherokee Strip, we paid, I think, an average of \$6 an acre for those lands; and for lands occupied by Indian tribes in Oklahoma we paid all the way from \$1.25 to \$2.50 and even \$3 an acre.

In the act which opened those lands to settlement there was a provision that the settlers should pay to the Government a certain price per acre, which was enough to reimburse the Government. That went on in South Dakota and in other places, and wherever land was purchased from the Indians it was required in the act

which opened the land for settlement that the settlers should pay enough to reimburse the Government.

Senators will remember the agitation which arose for the remission to the settlers of the money which they had agreed to pay in settling upon these lands in Oklahoma. The question arose first in Oklahoma. It was put upon the ground, not so much that the Government ought to buy lands from the Indians, and then give them away, as upon the ground that these lands belonged to the subarid region, and that it was impossible for the settlers upon them to make off of the farms, upon which they had thus settled, money enough to meet their obligations to the Government. Senators will remember the maps which were brought in here, on which the arid and subarid regions were pictured, to show where the settlers had gone. The demand that the obligation should be released in Oklahoma was taken up in South Dakota, so as to embrace all the lands as to which this policy had prevailed, of requiring payments from the settlers to reimburse the Government. As in various other cases where great pressure is raised, that bill was passed. The people interested in it got it into the platforms of both political parties, where, of course, very little was known as to the effect of it, and the bill finally went through the Senate.

Shortly after the bill passed the Senate there came a change in the estimate of the value which was placed on these lands. I think I am not mistaken in saying that within a year after the free-homes bill passed the school-fund commissioner of Oklahoma made a report in which he said the average value of the land belonging to the school fund in Oklahoma was \$30 an acre.

We have been told that on account of the subarid conditions it was impossible for the farmers or settlers upon these lands ever to discharge their debt to the

Government, and the time of payment has been extended and extended year after year because they could not meet their payments. But immediately after we passed the bill they began to boast of the value of their lands.

Very soon after the passage of the free homes bill, indeed, at the time of its passage, there was an act providing for the opening of the Wichita Reservation, and in that act, as in the other acts we have passed, there was a provision that the settler should pay for the lands he took, so as to reimburse the Government. Those lands had not been opened at the time of the passage of the free-homes bill, and so that bill did not apply to them; the settlers were not released from the obligation to pay a dollar and a quarter an acre for these lands, and that law stands. Those lands in the Wichita Reservation have not been taken up under the act requiring the settlers to pay \$1.25 an acre for the lands settled upon.

I think, Mr. President, that is true with regard to the opening of the Kiowa and Comanche Reservation. It will be remembered that there was such a rush for those lands that the question had to be determined by lottery, and that, I imagine, will be the case with reference to the lands referred to in this bill. There will have to be some method to determine as to how the settlers shall take the lands.

When we opened the Colville Reservation, if I am not mistaken, we required the same policy to be pursued; that is, that the settlers should pay for the lands.

So, since the passage of the free-homes bill up to the time of the passage through the Senate of the Crow Creek Reservation bill, we have been insisting that the settler should pay a sum sufficient to reimburse the Government for the land he takes. As I said before, I see nothing inconsistent with either the policy of the homestead law or the policy of the free-home act in that respect. It is

true that the question of free homes was talked about at the time of the passage of that bill; but that was not a bill to buy land of the Indians at full prices and then give the lands away to settlers. It was to release the settlers from their obligation to pay the Government what they had agreed to pay in taking up the lands. It was put, in the first instance, upon the ground of their inability to pay the amount. So that this comes up as a new question. It has got to be settled now, and as it is settled now it will probably remain the policy of the country.

We gave away to the people who had settled upon Government lands, under an understanding and agreement that they were to pay for them, a good many million dollars—say \$20,000,000—and it has been stated to be a larger sum than that. I put it within bounds when I say that we released to them \$20,000,000. If that was right—if the settlers were entitled to free homes without paying the Government for the land what the Government had paid to the Indians—we ought not to stop there, but we ought to refund to the people who have settled Colorado a dollar and a quarter an acre; we ought to refund to the people who have settled the Wichita Reservation their dollar and a quarter an acre, and wherever at any time we have required that settlers should pay for the lands thus opened we ought to refund to them the price paid. It is just as much our duty to do that as it was our duty to release from their obligations those who had made agreements with the Government. We should make no distinction, as it seems to me. But that is neither here nor there. The question is, What are we going to do in the future?

Mr. SPOONER. Will the Senator allow me to ask him a question?

Mr. PLATT of Connecticut. Certainly.

Mr. SPOONER. I came into the Senate Chamber while the Senator was speaking, and he may have referred earlier in his remarks to the point concerning which I should ask him a question. I ask the Senator if there has been any estimate of the number of acres in the reservations yet to be acquired from the Indians in this country which will probably call for a determination of this question of policy, whether we shall continue to do what we have done, or stop?

Mr. PLATT of Connecticut. I said in the opening that I had not any accurate figures, but I thought it was safe to say that we had still remaining Indian reservations, which were in the near future to be opened to settlement, which would cost the Government in the neighborhood of \$50,000,000.

Mr. COCKRELL. How much did the Senator say?

Mr. PLATT of Connecticut. Fifty million dollars. I should like the opinion of the Senator from Missouri on that. I am not speaking accurately.

Mr. COCKRELL. I have been looking for the exact data, but I have not been able to arrive at the precise sum. It is, however, a large sum—many millions.

Mr. PLATT of Connecticut. Take the State of South Dakota. We are paying her \$2.50 an acre for these lands and they have remaining something like 8,000,000 acres. That is \$20,000,000 by itself. If we continue to open up lands at the same rate and we continue paying to the Indians for these lands, it is a question of \$20,000,000 for the State of South Dakota; and I think that, running through my mind other reservations, I am entirely within the limits when I say that if we go on paying the Indians at the rate we have been paying them for their title, the Government will expend in the very near future at least 850,000,000.

Mr. President, there is really no necessity for this. It will be observed that the taking up of these lands, thus purchased from the Indians and thrown open to settlement, has become very much of a lottery. There is a rush for them, with the "devil take the hindmost." The opening of the Oklahoma Reservation, the Cherokee Reservation, was not so long ago but that the circumstances attending it are in the recollection of Senators. People camped for months on the borders of that reservation, and we were required to send troops down there to prevent the people going in until the time came for the President's proclamation, when they could go in, and then there was a mad rush to get the best lands, with the usual result of a whole crop of claims of fraud in getting upon those lands. Then came the opening of the Kiowa and Comanche Reservation only last year, where similar scenes would have been enacted if it had not been that the Government established a kind of lottery there, and the applicants drew lots as to who should have the first opportunity to make settlement.

So the settlement upon those lands, thus acquired from the Indians, has come to be largely professional. The first push for them is by people who think they are going to make something and get something for nothing. So that in the settlement of these lands it has come to be well known that there are three classes of settlers upon the public lands, first, the professionals, who rush in and through their smartness acquire valuable holdings, with the intention of disposing of them just as soon as they can; second, the people who remain behind, who do not get in at the first rush, and who buy from the speculators and the professional settlers who get in in the first rush. They may be called the middlemen. Finally the land is sold to the real settler, who goes there to make a home and get a living off the farm. Am I not right about that?

Mr. President, why should this be? Why should we buy land from the Indian, giving him practically the value of his land, as if he held it in fee simple, then open it to settlement under the homestead law, and give it to the man who can first get onto it any more than we should buy land from the citizen adjoining the reservation for the same purpose? I do not know but that I have said all I desire or need to say upon this subject. I wished to place the matter clearly before the Senate as it seemed to me. Certainly we have got to do one of two things. We either must, I think, having the interest of the Government in view, stop paying these high prices to the Indians for their land, or we must require the settlers to reimburse the Government.

In regard to that subject, there is a sentiment in the country which holds amongst philanthropists and humanitarians that we ought to pay the Indians what their land is worth at the present time, upon the idea that it belongs to them. I do not share in that idea. I think that when we make an Indian tribe rich we delay its civilization. The easiest Indians in the country to civilize are the blanket Indians, and they have no money, no funds, no lands, no annuities. The Indians in this country who make the most rapid advance toward civilization and citizenship are the Indians who have not any great funds to their credit in the Treasury. The hardest Indians to civilize or to start on the road to advancement to civilization are those who have the largest funds in the Treasury to their credit.

I might illustrate by the Osages, whose fund is the largest per capita of any Indian fund—indeed, the Osage nation is per capita the richest community in the world if their lands and their funds were to be divided among them per capita. It is and has always been utterly impossible to break up their tribal customs or to change

their tribal habits or to get them to cultivate the land to any extent. They simply regard themselves as rich people who are under no obligation to work. I remember, when visiting their reservation at one time, I said to one of them, through an interpreter—a very intelligent Indian, I thought—“Why do not you Indians take up these lands in small holdings, cultivate them, raise wheat, corn, and vegetables, have some stock, and farm the lands as men in my country farm?” “Why,” he replied to me through the interpreter, with an air of superiority, “sir, do your rich men work?”

So, if not impossible, it is almost impossible, to change the habits and customs of the Indians if they have large funds from which they can draw annuities.

I do not want to extend these remarks on the Indian policy in the discussion of this bill; but, as I said, either one or the other policy I have indicated ought to be pursued. We ought not to recognize the fact in dealing with the Indian for the opening of his reservation that he can claim that the land which he cedes to the Government should be paid for at its full value, or we ought to require that, if we are obliged to pay, and do pay, full value or what approximates full value for the land, the Government should be reimbursed.

There is another feature of this case which I wish to present, and which I think should commend itself to the Senators from South Dakota. We have passed here an irrigation bill, and passed it unanimously in the Senate. Its friends—and I think we are all its friends—desire that it shall prevail in the other House; but whether it does or not at this session of Congress, it is apparent that in the near future the Government is to take the money derived from the sale of public lands and apply it to irrigation purposes. But the Government lands from which money can be derived to be applied to irrigation purposes are

pretty much gone. It is the lands which are to be acquired by the opening of these Indian reservations upon which our irrigation friends must rest for their hope that they will acquire any large money from the Government lands for irrigation purposes.

If we make the settlers reimburse the Government for what it has paid the Indians for their lands, what is the result? The Government is going to get back the money, to be sure, but it is going to take it immediately and hand it over for the purposes of irrigation. I do not know how it is in South Dakota, but I think South Dakota is one of the irrigation States in which it is proposed to take the money which is derived from the sale of the public lands and apply it to that purpose. I think this view of the subject should commend itself to those Senators who wish to commence and to extend the irrigation of the arid lands. I think the necessity of enriching those arid lands by irrigation is just as great, to say the least, as the necessity of opening lands not needed to be irrigated to free settlement.

Mr. DUBOIS. Mr. President, it seems to me there is only one thing to do in this case. When the free-homes bill was passed, it set a precedent which I think we are almost bound in honor to follow. I had the honor to be the chairman of the Committee on Public Lands when the free-homes bill was being pressed. I was opposed to it, and I was opposed to it to such an extent that the Senators interested took it out of the charge of the Committee on Public Lands and passed the bill through the Committee on Indian Affairs, where it did not belong. Some Senators, as you know, were very much interested in it.

I was opposed to the free-homes bill unless it should be applied to future reservations as much as to those which had already been opened; and that was, I think, a

perfectly logical and sound position. Now we are again confronted with the question, and we shall be confronted with it every time we open an Indian reservation. The argument in favor of the free-homes bill seemed to be sufficiently sound. At any rate, it convinced both branches of Congress, and the bill was passed.

The Senator from Connecticut [Mr. PLATT] speaks about the settlers reimbursing the Government. The reason the free-homes bill was passed was that the settlers could not reimburse the Government. A commission is sent out, for instance, to conduct negotiations with a tribe of Indians for the relinquishment of certain of their lands on the reservation. All the settlers nearby, and more especially if there is a town adjacent, are exceedingly anxious that a treaty shall be made. The Indians understand this perfectly well, and they put a price on their land which is far beyond what it is worth to anybody. Here is this pressure from all sides, from the settlers, naturally enough, to have these lands opened, thinking that it is going to build up the country at once, and they urge the commissioners to make any trade they can. After four or five conferences the commissioners make an agreement with the Indians and bind the Government to pay them more for the land than it is worth. In the past the settlers have gone in and taken all these lands and found out that they could not pay for them. Every Senator here from the middle West is old enough to know that when a man goes upon public land and reclaims it it costs him sufficient money without paying anything in addition for the land. It is a very hard matter to reclaim wild lands, whether they are timber lands or sagebrush lands. It requires a sufficient expenditure without anything added.

We have an illustration in my State, and I thought the Senator from Connecticut was going to mention it. When

the free-homes bill was passed, at the same session, but a little later, we opened up a reservation in Idaho—the Fort Hall Reservation—a large section adjacent to a town of five or six thousand people. I recollect going down and addressing the Indians myself.

Mr. SPOONER. In what language?

Mr. DUBOIS. In their native language—through an interpreter. [Laughter]

We were very anxious to have these lands opened up adjacent to this town of five or six thousand people. The town is the center of the Indian reservation. The commissioners made an agreement with those Indians by which they were to pay \$15.75 an acre for some of their lands. They were to pay \$10 an acre for land lying along a water course, \$5 an acre for perpetual water rights, and 75 cents annually for maintenance charges. The people will not take up that land. The proclamation opening the reservation will be issued in a month probably, and I know very well what will happen. The people, just as soon as they have taken the land, will appeal to Senators and Representatives in Congress to have the free-homes act applied to them; and that will be the case in almost all of these reservations.

Mr. PLATT of Connecticut. May I ask the Senator a question?

Mr. DUBOIS. Certainly.

Mr. PLATT of Connecticut. Does the Senator think we ought to go so far as that—when we open up irrigable land and require the settlers to pay for the improvement and irrigating the land we ought then to refund that money to the settlers?

Mr. DUBOIS. No; I do not go so far as that, I think in that case a fair price should be fixed or the land sold to the highest bidder. For the other lands in this reservation, which are entirely outside of it, we have to pay \$3.75 an

acre; but the Government had already built this canal; it is Government property, and the Government owns it. In the States of Wisconsin, Indiana, Illinois, and Iowa the public lands were given to the settlers.

Mr. SPOONER. The Government owned those lands.

Mr. DUBOIS. The Government owned those lands, and they were given to the settlers under the then existing land laws. You put the Indians on large tracts of lands in the Western States, and in our country, which we are now trying to settle up, you segregated large sections of land and put Indians on them. They got about as good land as there were out there. And there is no reason—and this point was thrashed over and was the cause of the passage of the free-homes bill—why our people should not have these lands from the Government the same as the older States had their public lands.

Mr. PLATT of Connecticut. I do not wish to interrupt the Senator, but I think he will agree with me that lands in Illinois and Indiana and Ohio—

Mr. COCKRELL. And Missouri.

Mr. PLATT of Connecticut. Were not taken up under the homestead law. They were taken up under the preemption laws and paid for.

Mr. DUBOIS. I do not care how they were taken up. This proposition is to have the lands taken up under the homestead law, which is one of our public land laws. The lands in Missouri, Illinois, and so on, were taken up under the then existing land laws. I thoroughly agree with the Senator from Connecticut that we are paying too much for these Indian lands, and I am willing to go with him and adopt a policy of paying for the Indian lands what they are worth on a fair appraisement and paying no more for them, and not pay a fictitious price set by the Indians on account of the pressure from white men on the outside, and then turning these lands over to

settlement under the homestead act. But I am very much opposed to making the settlers reimburse the Government for what it pays for the Indian lands, knowing as well as the Senator from Connecticut does that in every instance almost the commissioners appointed by the Government have fixed too large a price, and knowing, as we from the West do know from experience, that our settlers can not reclaim these lands and pay this price for them.

Mr. STEWART. Mr. President, there are many embarrassments arising from the unfortunate policy adopted in the early days in the treatment of the Indians. It was assumed that they were different from other human beings and that they would not work. That was not assumed in Mexico or South America, and the result there has been that the Indians constitute probably four-fifths at least, and perhaps nine-tenths, of the population; and they are good, honest, working people, and they have improved. It has not been assumed, either, in British Columbia. I was there a few years ago, and in Victoria I found the Indians of the same tribe that I had found on this side taking contracts, etc. It is a mistake to believe that they will not do under like circumstances as other human beings will do. We commenced with the system of buying them off, of feeding them, of nursing them, of assuming that they would continue to be the wards of the country.

One early day Chief Justice Marshall held that it was the point of all European countries to disregard the title of the natives, and that discovery gave title to the country which made the discovery. It was said that the governments of Europe had title to the land and were not under the obligation of recognizing the native title, and it was not recognized in Spanish-American countries. It was disregarded, and the Indians were treated like other

human beings who were poor and dependent and had to work for a living.

Wherever they have been thus treated the Indians have developed a great capacity for improvement. In my State I saw something of them before I came here, and I opposed reservations. I opposed the feeding of them. I claimed that the Indians were better off if let alone, and we find that is true. They are scattered all over the State in little camps. We find them at work and improving, and they are superior to other Indians. They are different Indians. Of course they are. They are very much superior. You can distinguish them at once from Indians who have been on a reservation. The reservation Indian has not developed at all. Go to the school at Carson, and you can very readily pick out the Indians who come from reservations from those who have been on farms and at work and let alone.

If we had adopted that policy in the beginning we would have had three or four or perhaps ten or fifteen million good Indians. Take human beings, particularly before they have been developed by civilization, and feed them, supply their wants, and they will not exert themselves to supply their needs. I remarked once of the people of this city that if they were surrounded by an army and could not go out of Washington for a couple of generations and were fed and nursed and cared for they would come pretty nearly down to the level of the ordinary Indian; that they would degenerate very rapidly. That is the way we have been treating the Indians.

Now, by Executive order a very large portion of the West has been reserved. We are attempting to open those reservations. Let me tell the Senate some of the difficulties we meet with. There are a lot of leases out. The men who want land for that purpose stand between us and negotiations—ranchers and such. They are men putting up

a fancy price on the Government. They are speculators with the Indians. The Indians see the price of land adjoining theirs, where farms are, selling at a certain price, and they ask the same price, and they will always demand that price. Why should they not? They are fed anyhow; they are independent they do not have to work for a living; they are in comfortable circumstances, and they can wait.

If the lands can be leased and they get the proceeds, while the Government is feeding and educating them, they are not under the common necessity to become civilized. If we continue the policy of letting the Indians fix a fancy price on these lands and we buy them and give them away we shall involve the Government not in \$50,000,000, but in more than \$100,000,000.

The question is whether that is wise policy. The Committee on Indian Affairs have been discussing it during the whole session. They have been discussing the question—what could be done under those circumstances; how far we are bound by the possessory title of the Indian to submit to his terms; whether the Government, having agreed to take care of the Indians, having some right to regulate the contributions it makes and the price it shall pay for the land—

Mr. SPOONER. Will the Senator from Nevada allow me?

Mr. STEWART. Certainly.

Mr. SPOONER. I desire to ask the Senator from Nevada if it be not true that the Indians have possessory title?

Mr. STEWART. No; not in the sense in which that term is used by the Senator from Wisconsin—possessory title which would give him affirmative rights. If a white man was in his position, going on and off the reservation when he pleases, would he get possessory title to 160 acres of land? The Indian is simply a wanderer.

Mr. SPOONER. Will the Senator allow me?

Mr. STEWART. Certainly.

Mr. SPOONER. If the Indian has not possessory title or the right of occupancy, which is the same thing, he has nothing to sell to the Government, has he?

Mr. STEWART. Oh, a sentimental right.

Mr. SPOONER. A sentimental right?

Mr. STEWART. Yes; and we pay a large amount of money. He has no other right but a sentimental right. He does not occupy the land. He goes off of it. He will not stay on the reservation. He does not occupy it at all. He does not have a possessory right in the sense of getting a possessory right to, land by occupying it. He has not fenced it in. He has made no improvements. He goes there occasionally when he wants to and when he does not he stays away. That does not give a possessory right to the land in any legitimate sense. He has a sentimental right. It has been decided that the Indians have no title to the land.

We treat them as if they were our wards, and, I say, treating them as our wards and recognizing the fact that they may roam over this piece of land as long as it is not wanted for any other purpose, and having fed them and taken care of them as wards, never having sold them the land, never having given title but the sentimental title, to say we must pay them their price before we shall open the reservation, is going a long way toward barbarism.

Mr. SPOONER. How did the Indian get the right of occupancy?

Mr. STEWART. He never had it. He does not live on the land. It is only the sentimental right of which I have spoken. He gets that right in Philadelphia. He gets it from the Indian Rights Association, which has pauperized him. Those associations have killed more Indians than ever were killed by the sword, by feeding them and pauperiz-

ing and allowing them to become indolent and diseased and to perish from the face of the earth. The great murderers of the Indians are the Indian Rights Associations, I say, because if the Indians had been let alone there would have been millions of them. But you can not support a community and feed them and still have them independent. They are dependent upon you for food, and therefore they will not work.

Mr. SPOONER. I should like to be permitted to ask a question of the Senator from Nevada, who knows a great deal about this subject, as he does about almost all subjects. I do not want to vote to pay to anybody for nothing money belonging to the people, and if the Indians have nothing to sell I hardly think it is right, in the faithful discharge of duty to the people, to appropriate money received from taxation to buy it of them. I have always supposed if I had a right to occupy a farm as long as I lived or until I surrendered the right, that that right existed whether I lived on the farm or not.

Mr. STEWART. That is too technical for this purpose. It will not apply at all.

Mr. SPOONER. I am asking for information.

Mr. STEWART. I will give you the information if you will let me talk.

Mr. SPOONER. Certainly.

Mr. STEWART. I admit that they have a sentimental right, and that is the only right they have to the land. It was decided in the beginning that they had no title to the land. We undertook to take care of them, to make them our wards. They were permitted to occupy so much land. We did not give them title, and they ought not to hold it and they have not any right to hold it longer than is for their benefit. We have been educating them. We have supplied schools for them. We have supplied places where they can learn trades, and all that. We are trying to

develop them into responsible human beings; and the great drawback is, as the Senator from Connecticut said, that they have money and they are rich and will not work. It is the money which is demoralizing them. There never was a dollar of money given to a hearty Indian that did not do him harm under any circumstances. There never was a time that it did not take from him part of his manhood and degrade them. Anyone can see the difference between those who have been degraded by being fed and those in the North and South who have not been fed. See how superior they are. That is the situation.

But this policy has been established, and we can not destroy it at once. I do not propose to do anything radical. I am in a responsible position as chairman of the Committee on Indian Affairs, I will not disturb a condition of things that has grown up and been established, but in dealing with this subject we ought to consider what is for the benefit of the Indians and not let them dictate our policy; not let them say, "We must have so much for this land or we will not sell it," when at the same time the Government is feeding his children and educating them.

Mr. TILLMAN. Mr. President—

The PRESIDING OFFICER (Mr. FAIRBANKS in the chair). Does the Senator from Nevada yield to the Senator from South Carolina?

Mr. STEWART. Certainly.

Mr. TILLMAN. Have we not had treaties with the Indians for two hundred years by which for certain considerations they have assigned to us as white people their title, whatever it might be, sentimental or otherwise? Does the Senator suppose we are going to change that policy now—

Mr. STEWART. No.

Mr. TILLMAN. And go to war with the remnants who are living—

Mr. STEWART. No.

Mr. TILLMAN. In order to finish up the job of murdering—

Mr. STEWART. No.

Mr. TILLMAN. And killing them all in order to get what little land is left?

Mr. STEWART. No.

Mr. TILLMAN. What does the Senator propose?

Mr. STEWART. I was speaking of the reservations in the West.

Mr. TILLMAN. Are not they there in consequence of treaties made by the Indians with the Government?

Mr. STEWART. Very few of them are of that kind.

Mr. TILLMAN. Whence has come the practice of buying the lands and giving the Indians the money or setting it apart here in the Treasury and using it to educate the Indians and build houses and do different things of that kind? Whence did the authority come?

Mr. STEWART. Congress assumed the authority.

Mr. TILLMAN. Congress assumed authority, under the Constitution or unwritten laws, which are just as binding.

Mr. STEWART. Unwritten laws can not be enforced against the Indians.

Mr. TILLMAN. I believe the Senator has disclosed here that old Western feeling, that there is no good Indian but a dead Indian.

Mr. STEWART. I beg your pardon. I have been a friend of the Indian always. Go to my State where the Indians are. They come to me as soon as I get there. They tell me their troubles, and I have been their friend; and I can say that our Indians are superior to those of any other Western State, because they have not been fed and kept in idleness. We have taught them something of the lesson that they must work.

Mr. TILLMAN. Will the Senator allow me?

Mr. STEWART. Certainly.

Mr. TILLMAN. Is it not because your State is so much of a desert that no white man wants to get in there at all and it is a wonder that Indians can live there?

Mr. STEWART. No: it is not that. We pick our white men.

Mr. TILLMAN. I am not casting any reflection upon the Senator or the citizens of Nevada. It would be against the rules to do that. I am merely asking the Senator for information.

Mr. PLATT of Connecticut. Mr. President, I wish to suggest, in all good nature, that the Senator from South Carolina is violating a rule of the Senate in speaking disrespectfully of a State.

Mr. TILLMAN. I have been thinking some one would draw that rule on me. I saw it torn to tatters by the junior Senator from New York [Mr. DEPEW], and nobody seemed to care about it: and I have seen it torn into tatters a half a dozen times since, and I did not think anyone would spring it on me.

Mr. STEWART. Nevada always receives such suggestions with indifference, because Nevada always considers the source, no matter what State it comes from. It is a matter of envy. We understand that.

Mr. TILLMAN. Will the Senator from Nevada allow me to apologize to Nevada for having even suggested that its arid condition and its heat and its sand and other undesirable qualities alone are responsible. I have great respect for Nevada.

Mr. STEWART. I will allow the Senator to apologize for his gross mistake in regard to Nevada. Nevada has numerous agricultural valleys which will compare favorably with any on earth. It has great agricultural capacity. She is situated away from the market. Ultimately, as the country develops, she will support a large agricultural population.

With respect to mineral resources, I do not think Nevada is equaled in the United States. We labored under disadvantages for a while. The Comstock gave out practically; silver was demonetized, and our people were engaged in silver mining, and did not take to other business very readily. It took some time. Besides, there was in San Francisco a board of stockbrokers who told people there was nothing in Nevada but the Comstock. The Californians kept away. We worked under great disadvantages for years.

I am happy to inform the Senator, and also the Senate, that within the last eighteen months there have been important mineral discoveries made in nearly every county in my State, and some of the richest mines ever known have been discovered. It is not confined to gold or silver or copper or lead, but it contains all the minerals. It is a great mineral State and is forging to the front very rapidly, and instead of sneering at Nevada he will find the people of South Carolina emigrating there very rapidly in the near future. There is no doubt about that. People are coming there from every State in the Union. Nevada will be the pride of the Union. She has produced, it is estimated, about eight hundred millions of gold and silver with her small population. I am glad to have this opportunity to speak for Nevada. It has been reported by the agents that Nevada has the best Indians of any State in the Union, and it is because her people have allowed them to be industrious and have not fed them. They have not been pauperized.

The question is presented right squarely here, Shall these millions of acres of land which have been withdrawn—because they have all been withdrawn without any treaties—for the temporary occupancy of the Indians, whom we are feeling, remain shut up from population, and the people be taxed to feed the Indians in idleness, or

shall we make reasonable arrangements with them. Shall we take care of them as intelligent people shall? Shall we reduce the sentimental right they have to a practical right? The Indians do not need the lands. Why should two or three hundred Indians have four or five million acres of land which they do not cultivate, which they do not utilize, when there are white people around who want homes? Those same white people, poor as they are, are taxed to feed the same Indians. Why not utilize the land which the Indians have? Why not let civilization have some show and not allow sentiment and prejudice and folly and bribery of the Indians to pamperize them? That has been the policy too long.

I shall not do any act or cast any vote against the policy of the Senate. As a Senator I shall go with the policy of the Senate. If it is the policy of the Senate to tie up these lands until the Indians shall consent to sell them at an enormous price, and in the meantime we shall continue to educate the Indian children; if we are to treat the Indians as our wards, while not exercising any of the power of a guardian over them, but upon the other hand allow the ward to dictate to the guardian. I will be governed by the policy. The policy of allowing the Indians to put a fictitious price upon lands valuable to the surrounding whites and which the Indians will not occupy, when they are merely put there temporarily, while the Government is the guardian and takes care of them, will result in much evil and much embarrassment. Much fraud and embarrassment exist now.

I wish to call attention to one point. These lands ought to be opened. There is no doubt about that. In the condition in which the Indians had them, and if it had not been for the labor of the whites, they would not be worth 5 cents an acre. I think we are paying a pretty large price for these lands. We have passed one or two bills in

which I thought the price fixed was reasonable. The one in Montana was very reasonable, and the North Dakota Senators have had some rich lands there, and they consented to an arrangement. If the Government pays this price for the land and gets nothing back, it is simply one of the hardships. There are millions of acres of land in this situation. You have to meet it. As the Senator from Connecticut says, there is a great question involved, and it should be met soberly. Think about it and get at it and do right. Do nothing to offend the Indians. Do nothing that will violate any right.

Mr. CLAPP. Mr. President, it seems to me that this discussion has drifted somewhat from the real subject-matter under consideration. There is no use in discussing the past policy with reference to the Indian question. We are confronted with a condition. The Indians hold their reservations under treaties, and there is not any use in beating about the bush. We are met primarily by the proposition. Can the Indians dictate the price which the Government shall pay for the reservations? If they can, then it is idle to say that we pay too much or that we ought not to pay what they demand. They are either in a position, owing to their title under the treaties, to demand a price or they are not; and there is no halfway ground with reference to these treaty rights.

Mr. President, the people of the United States must gradually absorb these reservations for two reasons. In the first place, it must be done for the benefit of the Indian himself, for it is demonstrated by experience that the more rapidly the Indians are separated the better it is for the Indians. Then civilization demands that the reservations shall be gradually absorbed. So I say we have to contemplate the acquisition of these reservations, and the Senate is not ready, nor is the House ready, nor is public opinion yet ready, whatever may be the abstract

right of the Indians, to ignore that right and say that we may proceed upon our own motion to acquire the reservations. It seems to me that that absolutely disposes of the question, not only with reference to this treaty, but other treaties, whether we pay too much for the lands or not. In each case the question must present itself whether the interest of the Indians and the interest of the people warrant the price paid; or, in other words, warrant the opening of the reservation.

Now, when we come to the disposition of the lands thus acquired, it seems to me that we do not stand at the threshold of the adoption of a policy and that no question of policy is concerned, for the reason that in every one of these reservations the value of the land depends upon the surrounding circumstances. It was only last week, I think, that we secured the ratification of a treaty with Indians in northern Minnesota, where we most gladly permitted a price to be put upon the land in its sale to settlers, because that reservation was surrounded by a settled community and the land had a value beyond ordinary public land. The land itself was valuable in its own character.

There may be another reservation entirely separate and distinct where the land around it has not been taken, where settlement has not given the land in the reservation a value, or where the character of the reservation itself is such that it does not possess inherently any value.

So it seems to me, Mr. President, it is not the adoption of a policy and it has no reference to the free-homestead policy whatever, but it is a simple proposition whether as to this reservation or that reservation we should make the land free or whether we should put a price upon it. It seems to me that as to this reservation, in view of the situation of the land, in view of the want of settlement around it, in view of the want of value in the land itself,

it would be a mistake to place a price upon the land, and therefore we should put the land upon the free list independent of and without any reference to any policy whatever. The opening of each reservation should stand upon its own merits and be determined by the conditions and circumstances which surround it.

Mr. TILLMAN. I desire to ask the Senator from Minnesota a question just for information. I know nothing about the merits of this bill. I was merely paying attention largely to the general subject of Indian reservations as brought out by the Senator from Connecticut. I happened to be in Oklahomas in the past year, and I found some Indian reservations still existing there, the farm lands on all sides of them now occupied by white people, and given to those white people under the homestead act, worth from \$15 to \$40 an acre.

It seems to me it would be rather queer that we should buy those remaining reservations in the future at some arbitrary price much below the selling price of lands immediately adjoining, and then give them away, because how are we to give them away without making favorites of somebody? When the Kiowa Indian Reservation, in the western part of Oklahoma, was opened last year to settlement under the homestead act all will recall that they were. I think, 16,000 allotments, and about 100,000 applicants for the 16,000, and the only way to determine as to who should have them was a sort of wheel of fortune or a drawing. What right had anyone to authorize that those lands should be drawn for? In other words, what fairness was there in it to home seekers to thus dispose of the land?

This is rather a long question; it is something of an argument also; but if the Senator can give us any idea in regard to the special bill that is now pending and the value of the surrounding lands we can better determine—

at least I would be better satisfied to vote on the proposition—as to what we shall do.

Mr. CLAPP. The Senator asks two questions. One is as to the wisdom or authority of the method employed in opening the reservation as it was opened with a system of drawing lots. That is a matter I know very little about. It occurred before I was on earth, figuratively speaking.

The other question is along the line of what I was urging, that each instance should be determined by its own surroundings. If there is a reservation here and the land around the reservation is valuable, and the land in the reservation itself is valuable, then it is a mistake to make that land free. On the other hand, if there is a reservation and the land around it is not valuable and the land in the reservation itself is not valuable there is no reason why the settlement of that reservation and that section of the State should be retarded by placing a price on the land simply because some other reservation is surrounded by valuable land and is itself valuable.

Mr. TILLMAN. Will the Senator allow me to ask him right there if he has ever known of any Indian reservation which was sought to be opened or purchased and the title of the Indians vested in the Government, so that it could either sell or homestead it, that was not valuable? In other words, do we not allow the Indians to live on the lands that are not valuable without any disturbance, and is it not those alone which are sought for homes or for minerals that we are trying to buy from the Indians?

Mr. CLAPP. Not necessarily. Here is this reservation in South Dakota. Of course the Senators from South Dakota can speak more specifically of the character of the reservation and its surroundings than I can; but because we have to pay the Indians a certain amount for that reservation, as a matter of progressive Indian policy, for the purpose of separating the Indians and extinguish-

ing the reservation or for the purpose of meeting the advancing demands of civilization for the use of the lands, it does not follow that the land is primarily and inherently worth so much an acre. Another reservation may be valuable, as I stated in my earlier remarks, where we very gladly accord in the bill a provision that the land should be sold at the very price that the Government paid for it, because the surrounding land is settled and the land within the reservation is valuable. Now, because the Government feels that it is necessary under existing treaties to treat with this tribe and pay them something, that does not in itself involve a proposition that the land is primarily valuable by any means.

Mr. TILLMAN. Will the Senator tell us where this special Indian reservation lies?

Mr. CLAPP. The one under consideration?

Mr. TILLMAN. Yes, sir.

Mr. CLAPP. It is in South Dakota.

Mr. TILLMAN. Is it east or west of the ninety-ninth meridian?

Mr. CLAPP. The Senator from South Dakota [Mr. GAMBLE] can tell the Senator.

Mr. GAMBLE. It is west, I will say to the Senator.

Mr. TILLMAN. How far west?

Mr. GAMBLE. It is in the southern part of the State, west of the Missouri River. The reservation proposed to be opened is bounded on the west by the existing Rosebud Indian Reservation and also on the north. On the east it is partially settled. The balance of it is bounded on the east by the Missouri River.

Mr. TILLMAN. Is it not splendid grazing land?

Mr. GAMBLE. It is fair land. I think the price agreed to be paid by the Government of \$2.50 per acre is a fair consideration for the land.

Mr. PLATT of Connecticut. Will the Senator allow me to give him a little information about this land?

Mr. TILLMAN. Certainly, I will be glad to have information from any source.

Mr. PLATT of Connecticut. In the departmental letter signed by the Commissioner of Indian Affairs the following appears:

Respecting the terms of the cession, Inspector McLaughlin states in his report that he was greatly handicapped in the beginning by the fact that most of the Indians who favored a cession at all held the lands at an enormous price—from \$7 to \$15 per acre; that only a very few expressed their willingness to accept as low as \$5 per acre, and this in cash and all in one payment; that upon his arrival all the white men connected with the agency, as well as those of the surrounding country with whom he talked, held the lands in question as worth \$5 per acre; that it appeared that adjacent lands in Gregory County and in Hoyt County, Nebr., were selling at from \$5 to \$10 per acre; that a syndicate of cattlemen in Sioux City, Iowa, expressed its willingness to pay \$5 per acre for the entire tract, and that these current rumors and fictitious values placed upon the lands which were circulated among the Indians exercised them very much and had to be overcome by reasoning, which required time and a great amount of patience.

Mr. CLAPP. What I was arguing against was more the idea of a cut-and-dried fixed policy without any flexibility. What I was trying to urge was that each one of these treaties should stand upon its own merits. From what I know of that country I believe that the demands are such as to warrant throwing this land open for free homes, but as to the details, the value of the reservation and its

surroundings, of course the Senators from South Dakota are better able to speak than I am.

Mr. DUBOIS. I should like to suggest to the Senator from Minnesota, who is a member of the committee as well as myself, that after a number of years of trial we finally released all of the settlers from paying what they had agreed to pay. They entered into a definite contract with the Government to pay a specified amount for land, and notwithstanding that fact Congress released them from the payment of the money and the agreement they had entered into. While I am very much in favor of this bill because it has the homestead act in it, I do not think we ought to have a flexible arrangement. Congress ought to determine on something definite.

Mr. CLAPP. Mr. President, how are we going to determine, where the conditions are so various as they are? In the very case that was passed here last week there is absolutely no comparison in value between that land and the land involved in this case. I know that from what little I know of the situation, although I do not profess to know of it as the Senator from South Dakota.

The PRESIDENT pro tempore. The Chair lays before the Senate the unfinished business, which will be stated.

[35 Cong. Rec. 4855-4862 (1902)]

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION.

Mr. COCKRELL. There is a little bill—

The PRESIDENT pro tempore. The Senator will wait one moment. Under the unanimous consent given yesterday, it is the duty of the Chair to lay before the Senate the South Dakota reservation bill.

Mr. COCKRELL. I will wait until that is concluded.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect.

The PRESIDENT pro tempore. The amendment offered by the Senator from Connecticut [Mr. PLATT] is the pending amendment.

Mr. COCKRELL. Let it be read again.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. In section 3, page 6, line 18, after the word "acre," strike out down to and including the word "that," in line 25, and insert the word "and;" so that the additional proviso, if amended, would read:

And provided further, That the price of said lands shall be \$2.50 per acre, and homestead settlers, who commute their entries under section 2301, Revised Statutes, shall pay for the land entered the price fixed herein.

Mr. GAMBLE. Mr. President, this bill was under consideration some days since, and perhaps it might be proper at this time to restate to some extent the conditions of the agreement which it is proposed to ratify by the pending bill.

The amount of land within the area proposed to be ceded under the agreement is 521,000 acres. There should be excluded from that amount 105,000 acres already held by Indian allottees within the limits of the proposed cession. In addition to that, the reservation for school purposes, as provided by the enabling act, and covered by the amendment already adopted, amounts to 29,000 acres, leaving to be opened to actual settlers 387,000 acres.

This reservation, as was stated in the discussion yesterday, is located in the southern part of South Dakota about midway upon the southern border. It is bounded on the west and partially on the north by the permanent reservation already existing of the Rosebud, and on the east by the Missouri River and a limited settlement upon the southeastern border.

I do not propose, Mr. President, to enter into any extended discussion of this measure, but I do feel I ought to refer to some of the statements made by the distinguished Senator from Nevada [Mr. STEWART], the chairman of the Committee on Indian Affairs, in regard to the policy proposed to be inaugurated by the Government in dealing with Indians for the cession of their reservations. I believe that each tribe and each reservation should be considered separately and our rule of action governed by the existing conditions surrounding each particular reservation. We should have regard for the law by which the reservation was created and our obligations based upon the treaties in force with the particular tribe.

In 1868 a treaty was entered into between the United States and the Great Sioux Indians occupying this region, and they were circumscribed and limited under the provisions of that treaty so as to reduce them in their possessions and occupation to practically that part of South Dakota lying west of the Missouri River. It was provided in that treaty that this reservation so defined should be and was set apart for the absolute and undisturbed use and occupation of the Indians named therein.

Following that, in 1889, another treaty was entered into between the Government and the Great Sioux Nation, wherein it was proposed to segregate the reservation and divide the Indians of that reservation into

different bands or tribes as they had therefore been known and incorporated. It was not in the form of the usual treaty, but it was a solemn act of Congress. The entire nation was subdivided into bands or tribes, and they were then placed upon separate reservations and the limits of these separation reservations described.

Under that act they were confirmed in all the title which they had under the treaty of 1868, and were guaranteed and assured that they should retain the permanent use and sole occupation of their respective reservations thus defined. In addition to that, the Indians relinquished and ceded to the Government upward of eight and one-half million acres, which on February 10, 1890, were thrown open to settlement under the conditions stipulated in the treaty.

Following that and in line with the policy already inaugurated the act itself provided that at any time when, in the judgment of the President, it was thought to be to the best interests of the Indians that a part of their surplus lands should be ceded to the Government the Secretary of the Interior might negotiate with the Indians for the cession, and upon terms and a price mutually agreed upon between the Indians and the Government. No agreement, however, which might be entered into between the Indians and the Department should have any force until ratified by Congress.

Mr. President, the rule pursued in this case is in line with the law of Congress, and the law to which I refer did not become operative until it was ratified by solemn act of the great Sioux Nation. It not only has the force of a law, but of a treaty as well, and we should have the highest consideration for each and all of its provisions. Simply because we may have the power to do so, we certainly can not justify a breach of any of its manifest conditions or provisions.

I therefore submit, Mr. President, that the discussion entered into in regard to the general policy of the Government in treating with Indians upon the Western reservations generally has no force, nor is it entitled to consideration, as applied to this particular reservation. In this case we must comply not only with the law enacted by Congress, but with the treaty itself. We should take up this agreement for consideration dissociated from the general question and treat it as it comes here in conformity with the act of Congress governing the subject and with the provisions of the treaty by which the parties thereto are honorably bound.

I do not feel, therefore, it is necessary to enter into a general discussion of the future policy of the Government toward Indians upon the Western reservations. Nor do I feel it is pertinent in the consideration of the pending measure. Nor do I feel that any action now taken will bind Congress in its interpretation of other laws or other treaties which may be entirely dissimilar from the present. This must be governed and controlled by the existing treaty and the law itself.

Another subject to which I should refer was suggested by the distinguished Senator from Connecticut [Mr. PLATT], for whom I have the highest respect, not only for his ability and high character, but for his eminence as a lawyer. The amendment already agreed to in regard to the school lands was suggested when the bill was pending before the Committee on Indian Affairs.

The bill had not that provision in it as prepared by the Department. My own judgment was, and now is, that such amendment was unnecessary, because under the enabling act admitting South Dakota as a State it was clearly provided that sections 16 and 36 in each township were granted to the State for school purposes. This provision, however, did not apply to the then permanent

reservations within the State. As soon, however, as those reservations were opened, as in this case and became a part of the public domain, then an additional provision of the enabling act became operative, and it certainly, in my judgment, granted to the State sections 16 and 36 without further legislation upon the subject.

The argument, therefore, made by the Senator from Connecticut, that the State of South Dakota would, on the ratification of this treaty, derive a special benefit, is untenable. It relates back to the law of 1889, and we would be entitled to it under the provisions of that act, rather than by the bill now under consideration. All States recently admitted were granted lands for the benefit of the common schools. Simply because 29,000 acres may be reserved under this bill for school purposes, aggregating in value substantially \$75,000, is no argument that we are specially interested in the provisions of this bill, because it inures to the State and was conveyed by virtue of the act of 1889. Our right thereto was long since determined by existing legislation.

Mr. President, in the discussion of this measure I do not think that the mere financial consideration should be solely considered. Other considerations, independent of the price fixed, should receive attention as well. Great benefits accrue, not only locally, but to the nation at large in the development of natural resources and adding to our material wealth. If in the opening of the Western domain to settlement by purchase of the Indian title we are to compute it by dollars and cents alone, the Government has been a great loser.

I do not have a recent statement from the Department, but I observe from a report made in 1880 that counting up the cost of lands by purchase, and in extinguishing the Indian title, their maintenance, and the maintenance of the Land Department, the Government as an investor in

land had expended at that time over and above its receipts upward of \$121,000,000.

Mr. President, other high considerations should have weight, and we should not be entirely and solely controlled by the money consideration necessary to extinguish the Indian title. I submit that the surplus lands in these reservations not necessary for the use of the Indians in the Western States should and ought to be opened to settlement and the advance of civilization and material development and to provide homes for an industrious population. There is no logical distinction between a reservation now existing and one that heretofore existed.

The Government since its foundation has recognized the title of the Indians and has always treated with them for its relinquishment. It should be assumed a fair price was always paid them for that relinquishment. If it be proposed to pay the Indians \$2.50 per acre for these lands, it is only a question of degree and not a question as to the reversal of a policy. All the lands in the western part of country, and I might say practically in the entire country, have been purchased from the Indians at varying prices.

The homestead law enacted in 1862 certainly brought wonderful results, not only to the Western people but to the entire country. That law is in existence to-day, and I do not believe its policy should be reversed. It was sought to be reversed, as applied to Indian reservations, within the past ten or twelve years by compelling the settlers upon these lands to pay the amount the Government was required to pay the Indians for the extinguishment of their title.

I believe, Mr. President, these provisions were unfair and unjust and worked a great hardship upon this class of settlers. The measure passed two years ago, known as the

"free homes bill," it seemed to me, repudiated that policy, and we went back again to the general homestead law and policy of 1862. I do not believe it is wise at this time to reverse the policy established by the passage of the free homes law of 1900. That law was fully considered, and I believe it expressed the judgment of the country and of all parties.

I do not understand that there has been any proposition to change or reverse that policy in any bill introduced during the present Congress. I call to mind the bill for the opening of the Crow Reservation in Montana to free homes, involving, I think, about 1,000,000 acres, the bill for the opening of the Lower Brule Reservation of between fifty and sixty thousand acres to free homes, the bill introduced by the senior Senator from North Dakota for the opening of the Devils Lake Reservation.

This was prepared by the Interior Department, was submitted with its recommendation, and provided for the opening of the lands to free homes. It was so recommended by the Committee on Indian Affairs. I call to mind also the bill introduced by the junior Senator from Minnesota, opening the Red Lake Reservation in that State. The bill was prepared by the Department and as introduced provided for opening the reservation to free homes. It was modified as to this provision by the Committee having it in charge. The Department itself recognized that it was the policy established by the Government, and followed that policy in the preparation of these measures for submission to Congress.

It was thought wise, Mr. President, that the amendment proposed by the Senator from Connecticut should be acceded to as affecting the lands in North Dakota. These lands are valuable, and settlers are eager to take them at the prices proposed. I quite agree with the suggestion made by the Senator from Minnesota, that

these reservations should stand individually upon their merits and be judged by the conditions surrounding each. The reservations in Minnesota and North Dakota to which I have referred are lands of high quality and are surrounded by well-settled and richly developed communities.

The conditions surrounding this reservation are entirely dissimilar. We have only to refer to the opening of the great Sioux Reservation in 1890. The lands are adjacent to this reservation on the north. The lands, however, proposed to be opened by this bill are much more desirable. By the act opening that reservation it was provided that all lands opened to settlement, the settlers filing thereon within the first two years should pay \$1.25 per acre; during the succeeding two years, 75 cents per acre, and thereafter 50 cents per acre. Within the first ten years of the opening of that reservation only 5 per cent of the lands were taken by settlers under the conditions of that act. This in itself plainly indicates the quality of the lands for agricultural purposes. For grazing purposes it is valuable and very desirable.

Some of these lands have been taken up by settlers during the past two years in consequence of the pressure of population and the increased value of the lands to the east of the reservation. Conditions in many other respects have been much more favorable to settlement. Immediately upon the southeast of this reservation is what was formerly the Fort Randall Military Reservation. This was opened to settlement by an act of Congress in 1895. There was a provision in that act permitting the State of South Dakota to select her school and indemnity lands within the limits of that reservation before filings from settlers should be received. It was carefully examined by the officers of the State, and they refused to make the selections of their lands within that reservation because they considered the lands undesirable.

Mr. President, here is a reservation removed from railroad communication and remote from substantial settlement, without opportunity for rapid development unless conditions are changed. It takes a long time for settlement to advance and develop these new sections. This reservation ought not to be classed with other reservations or to be controlled by any general policy, as has been urged, and ought not be judged by the conditions existing and surrounding other reservations in North Dakota or in Minnesota, where conditions are entirely dissimilar.

Within the limits of this reservation, as I have already stated, 105,000 acres of land have been reserved for 452 Indian allottee. In other words, 20 percent of the lands within the limits of the proposed cession has been retained by the Indians. The lands thus selected are the best and most desirable. They have made their selections and they hold them under patents from the Government and from which they can not be dispossessed.

I have here a map of the reservation, furnished me by the Commissioner of Indian Affairs, which indicates upon its face the allotments held by the Indians. It will be observed from this that they have secured practically all the lands along the streams, which in every sense are the most desirable.

I believe some substantial consideration ought to be shown by Congress to the settlers who take up these lands and assume the responsibilities of building up such a community. Unusual responsibilities which are clearly apparent must necessarily be assumed.

Mr. STEWART. Mr. President—

The PRESIDENT pro tempore. Does the Senator from South Dakota yield to the Senator from Nevada?

Mr. GAMBLE. Yes, sir.

Mr. STEWART. After they have taken the lands along the streams—the best lands—are we not paying a pretty high price for the remainder? Is not \$2 an acre rather an extravagant price to be paid for such lands, not to be settled for some time to come?

Mr. GAMBLE. I will say, in reply to the Senator, that I have been over a part of this reservation—not over it entirely—and also on its eastern border, and from my information as well as knowledge I would say that the price named is fair, equitable, and just, both to the Indians and to the Government.

Mr. STEWART. How about the country farther west, the higher lands?

Mr. GAMBLE. As to lands farther west, I should say that \$2.50 an acre would be too high, for the reason that the farther west you go the rainfall grows more limited. On the east of the Missouri River, and across the river it is settled. There is a railroad projected from the south, so that the people within this reservation will soon, I hope, have outside communication.

I was speaking of the hardships imposed upon the settlers who went in and opened up new communities.

Mr. STEWART. Are we not paying too much for those lands?

Mr. GAMBLE. No, sir; I think not. I say this is a fair and just price. They asked, in the first instance, an increased price for the lands—\$5, \$10, and \$15 an acre. I, however, think this is a fair and just agreement as between the Indians and the Government itself.

As I was saying before being interrupted by the Senator from Nevada, I believe consideration should be shown to the settlers who go upon these lands and develop homes there under new and trying conditions. The Indians are the wards of the Government, and on this particular reservation they have already secured 20 percent of the lands.

Under an act of Congress those lands are not subject to taxation and are inalienable for a period of twenty-five years. The personal property of Indians, of course, will be inconsiderable. The settlers will be obliged to meet unusual conditions and bear heavy and onerous burdens. It is no light or easy task to open and develop a new community. The settler, as a rule, is possessed of limited resources. In this case he will be practically unaided by the Indian. He will be obliged to bear his own burdens as well as that of the Indian. I am informed there is only one schoolhouse within the entire limits of the reservation.

The settlers will be compelled not only to develop this new community, but they will be obliged to build schoolhouses and maintain schools without any assistance from the Indians. The settlers, in addition, will be compelled to build highways and bridges and maintain them. They will be compelled also to maintain courts, and provide and supply all the machinery of local government. The settlers will be doing service for the Government in helping to civilize, cultivate, and develop the Indian, and to make of him a good citizen. I submit, Mr. President, some considerations should be shown them by the Federal Government when they assume these burdensome duties in behalf of the Government.

It was suggested that this involves the Government in a large outlay. I do not pretend to know what may be the final outlay that will have to be made by the Government in the extinguishment of the Indian title for the surplus lands in the existing reservations. It was said by the distinguished Senator from Connecticut that in his judgment—and I think that he advanced it simply as an opinion—it would require \$50,000,000. In the same connection he stated there were yet remaining 8,000,000 acres of Indian reservations within the limits of the State

of South Dakota. If they were to be opened to settlement at the rate of \$2.50 per acre, it would involve the expenditure by the Government of practically \$20,000,000.

Mr. President, I think if the first statement is as inaccurate as the second the Senator must be very wide of the mark. Within the limits of the reservations in South Dakota there have been reserved for the Indians, in addition to their allotments, a large amount for general purposes and the use of the tribes. So that, while there may be additional lands opened in South Dakota, I do not believe they will amount to more than 1,000,000 or perhaps 2,000,000 acres.

Mr. President, we respectfully submit that the bill now under consideration should receive the approval of Congress. We insist there ought not to be a discrimination made against settlers upon Indian reservations in comparison with the settlers upon other lands.

Why should not the settlers upon these Indian reservations be entitled to the same consideration as those who settled in Iowa, in Nebraska, in Minnesota, in North and South Dakota, and elsewhere? Those lands were purchased from the Indians; the Indian title was extinguished in like manner and the lands were opened under the homestead and preemption laws, and why should not these settlers receive the same consideration, and why are they not entitled to even better treatment than the settlers to whom I have referred?

These Indians have been crowded into South Dakota from other States, and we have within the limits of our State between twenty and twenty-five thousand. We are asking that they be treated with equity, with fairness, and with justice; but there is no denying the fact that Indians there located materially impede the progress and development of our State. We desire, Mr. President, that

no injustice shall be done to the settlers who go in and assume and carry all these burdens. We ask that the settler, alike with the Indian, be treated with fairness and with justice.

I submit, Mr. President, that the bill should be passed as it has been reported from the committee; that the amendment proposed by the Senator from Connecticut ought not to receive favorable consideration, and that we ought not to reverse the policy of the Government in the application of the homestead law, and that its principles should be maintained and preserved with uniformity in our statutes.

Mr. TILLMAN obtained the floor.

Mr. PLATT of Connecticut. Will the Senator from South Carolina allow me a word before he begins?

Mr. TILLMAN. Certainly.

Mr. PLATT of Connecticut. I do not think any policy that we would give free homes by the act, which was called the free-homes act, was established, because that act was expressly limited to lands which had been already opened to settlement and acquired prior to passage of the act.

Mr. COCKRELL. What is the date of that act?

Mr. PLATT of Connecticut. May 17, 1900, page 179, Statutes at Large, volume 31. The act was expressly limited to what had been done before the time of its passage. That, as I understood, was in order that it should not be taken as the settled policy of the Government to do it hereafter.

Mr. TILLMAN. Mr. President, there is only one phase of this subject I wish to discuss, and that very briefly.

As a general proposition, I believe in opening our public domain to settlers upon as reasonable and as liberal terms as possible. Therefore, if I remember aright, I voted in favor of the passage of the bill which has just

been quoted by the Senator from Connecticut [Mr. PLATT]. In fact, I do not think there was any opposition to it.

But in that very matter of opening Oklahoma, I found last year in visiting that section the condition of affairs which I mentioned yesterday. When those Indian reservations were thrown open to settlers there was such a flood of applications for homesteads—the number so far exceeded the amount of land that was available—that the Department, in order to have any show of fairness, established a lottery, by which the several claimants, amounting to over 100,000, if I recollect right, for about 16,000 homesteads, were to put their names into a wheel and draw for the privilege of location.

Were those 100,000 who made application for homesteads bona fide homeseekers? Were they men who were endeavoring to get a foothold on the soil, make their settlement, and go to work to create a home and become citizens? No. There were speculators there from all portions of this country, men who were well to do, who had no purpose whatever of going to that country to locate permanently, but who went in, made their applications, filed their papers, and paid the little fee, whatever it was, to get the right to have their names go into this wheel and draw for the right to locate. I know men in my section of the country—although there were very few in that section who made any effort to get to Oklahoma—but I do know of instances in which men who were well to do and better off than I am, finding that there was a chance to get some valuable land for nothing, went out there, put in their applications, and drew. The one individual I have in mind just now did not draw a prize, but he might have drawn it.

But the question which presents itself to me as a practical man here is what right we have as legislators to

throw open these lands that we are going to buy at five, or seven, or whatever number of dollars it may be an acre, out of the public Treasury—what right have we to repeat the Oklahoma scheme? What right have we to tax the general taxpayers of the country, the ordinary people everywhere, to buy these lands and then give them to the gamblers who will go there and try to get land? I do not believe in such a policy, and therefore I shall vote for the amendment to make every man there pay whatever the Government pays for these lands.

Mr. STEWART. Mr. President, this discussion brings up the original question, the great question that is before Congress in dealing with these reservations, whether the United States is bound to give the Indians what they ask for their executive-order reservations. The Indians have been treated as wards of the nation. They have been fed; most of them have been cared for; they have been put on these reservations, and the reservations have been made valuable, not by their labor, but by the labor of the whites. The Government in setting apart a piece of land for them and reducing it to cultivation has acted as a guardian would by his ward.

The town-site speculators give away lots for the purpose of enhancing the value of the remainder of their lands, and the Government should do substantially the same thing. When it opens up a part of a reservation and settlers go in there, the remainder of the land is worth ten times as much as all of it was before. The very land referred to in the bill here was not worth 4 cents an acre originally when we were dealing with the Indians. It was worth but a mere nominal sum, and now we are to pay two dollars and a half an acre for it. Who has made it more valuable? The Government has made it so by opening the reservations and bringing the whites nearer to the Indians. The Indians have all the benefit; they still

have a possessory title to the lands given to them for temporary purposes, and they are taken care of as wards of the Government.

Originally, under the decision of Chief Justice Marshall, they did not have any title which the Government was bound to respect, except as a matter of humanity and charity to take care of them. We assumed to act as their guardian. I am in favor of taking care of them, and, where necessary, feeding them, but not feeding them too much, so as to make paupers of them, thereby destroying them. If that policy is to be pursued, if we are to be responsible for taking care of the Indians, and we set apart a piece of land and say to them, "You may stay within these large boundaries, containing a million or two million acres of land, and the Government will take the balance and open it to settlement," we thereby raise the value of all of the land; and if they are to be put upon it, so as to block settlement, the Government meanwhile supporting the Indians, it is going to take many million dollars.

The question is, Has the Government any power rightfully to open these lands to settlement? I do not mean legal power, because the Government undoubtedly has the right to deal with any of these reservations in any way it pleases. The courts have decided that question. We have opened reservations by acts of Congress, and we can give good title to the land within them. The power to do that has never been questioned; but I am speaking of the moral obligation to do it, and that is all the obligation we have in this matter. It is a moral obligation to recognize their possessory right. It is best for the Indians to take the best lands, but to take them in small quantities, if you want to civilize them. We can not civilize them by allowing them to roam over millions of acres of land. If we are going to civilize them—that is our mission—we can only do so by putting them on small tracts of land.

There is nothing so damaging to the civilization of the Indians as a large reservation, with the right to roam over it without working. Whenever you open a reservation you are going to bring in settlers and double and treble and quadruple the value of the remaining land. Are you going to do that and then let the Indians set the price? There ought to be some limitation, some discretion on the part of the Government. Perhaps the courts will decide that in the settlement of the country the procuring of lands for settlers is a public use. If the courts so decide, then the way to open these reservations will be for the Government to appoint a commission and adopt some method, so as to secure equity between the Government and the Indians for the benefit of the Indians, as well as to secure the Government against its Treasury being raided.

We are going to send our agents to treat with the Indians. We have entered into treaties with them and opened reservations on which we have expended a great deal of money. After we have done all that and donated the Government money for that purpose, shall we give the land to the bona fide settlers or to the boomers that go there to grab the land? If we follow out that scheme, it will take a great many millions.

Mr. TILLMAN. I will state, in addition, a fact which has been brought to my attention. I was told of cases in Oklahoma in which men who already had homes in other parts of the Territory previously opened rushed into the new reservation that was opened and proceeded to preempt, showing that the claim that you want to get bona fide settlers to go to that country does not hold good, and that speculators will be the main beneficiaries of this policy. It is a question of making somebody pay some money, and then you will get the bona fide settlers; otherwise you will have boomers and speculators and other such people who do not need this benefaction on the part of the United States.

Mr. STEWART. If the United States can not be protected from the payment of fancy prices put on these lands by the Indians, on the plea that the land adjoining is improved—I say if there is no way to relieve the United States of that burden, and we must pay those fancy prices, then we can hardly excuse ourselves for giving the land away.

Mr. QUARLES. Mr. President, I have a profound respect for the distinguished Senator from South Dakota [Mr. GAMBLE] and a desire to vote in accordance with his wishes, for I have no doubt he honestly believes that the interests of his State may be promoted by this measure, and I would cheerfully do so, sir, if the measure stood alone—if it did not affect and practically shape the future policy of Congress in regard to this matter of free homes. But we are standing at the opening of a new era in regard to this matter. As was well pointed out by the distinguished Senator from Connecticut [Mr. PLATT] on yesterday, it was all well enough while the Government had a great amount of surplus land and while the honest settler was struggling to obtain a home upon that land, that the former policy should obtain. I will not be outdone by anyone in the admiration I feel for the honest man who takes his wife and family and all the possessions he has in the world in a covered wagon and travels West to find a home and a shelter for his little flock. But, Mr. President, things have changed, and I am persuaded that this legislation is not intended, or, if intended, that it will not have the effect of reaching the honest settler who travels in a prairie schooner—as was done years ago—but that the effect of it will be to reach another class who are not deserving of the confidence of this body.

What have we done in this great Western country? By the opening of these large domains to public settlement

under the free-homes scheme we have really developed a new class of people out in that Western country. They are not settlers at all. As the Senator from South Carolina [Mr. TILLMAN] well says, they are speculators, and they have become a class that are exerting a distinct influence in that section of our country. Now, as soon as it is rumored that a reservation is going to be opened those men come and they cluster about that reservation; agitation is commenced, the Indians are stirred up, and that agitation becomes so rife that it is felt here in the halls of Congress. Free homes is a very attractive and enthusiastic proposition here. Western Senators and Representatives participate in the feeling, and practically we have been stampeded into measures of this kind several times. That free-homes business, after all, rests on the proposition of obtaining something for nothing, and there is no proposition in this world that is so attractive to a large class of people as that. If they can get something for nothing, they will spend more money to do it than the object which they seek is worth.

Mr. HANSBROUGH. In these cases they generally do spend more money than it is worth.

Mr. QUARLES. Very likely so.

Mr. HANSBROUGH. They spend more money than if they bought the land in the first place.

Mr. QUARLES. Very likely; and I am prepared to say to the Senator that, in my humble judgment, the settler who actually makes his home, who brings his family, and helps to build up a State and augment its prosperity, is not the man who will receive this exemption. He comes later. Your professional speculators and settlers are there. They are they by the thousands. They come from all parts of the country; they gather like birds of prey and are ready to make a rush or to take a chance at the wheel or anything else to get something for nothing. Then what

happens? After they have made the rush or have taken their chance in the wheel and have got a claim, they simply get a foothold there long enough to sell out to an actual settler afterwards, and he pays them five or ten dollars an acre as the case may be, and then they go away.

These men are not settlers, Mr. President. You could not tame one of them any more than you could domesticate a cyclone. They go from one frontier to another, and as soon as immigration advances they retire. They are children of the frontier, and we have educated them up until they have now become a class out there who are there ready to take the benefits of these acts, which are withheld really from the actual settler, who comes afterwards and pays his money to these fellows, takes his position there, and then, of course, the country is settled in that way.

Now, why should we not do business here on behalf of the Government on business principles? Why should the benevolence of this great Government blossom out of lotteries, or why should it degenerate into such a rush as they had in Oklahoma? I think the time has come to stop that thing, and have the Government do business on business principles. Let us deal with the settlers. Let them have this land at what the Government has paid for it \$2.50 an acre, and close it up there.

Mr. DUBOIS. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from Idaho?

Mr. QUARLES. Certainly.

Mr. DUBOIS. If it will not interrupt the Senator, I should like to call his attention to the fact that the bill provides for selling the land at \$2.50 an acre, or for homesteaders to go on it. Now, how is the homesteader going to be a speculator? He has to live on the land five

years among the Indians. Which proposition would sooner invite the speculator, \$2.50 an acre, or the homestead proposition in the present bill?

Mr. QUARLES. Theoretically, of course, they are homesteaders. They come in possession and stay until they can dispose of their claims, if they stay there five years under the land laws they are not obliged to plow a furrow. I ask my distinguished friend what good is to come to the State of South Dakota by having these professional speculators go in there and hold these lands for this period of time?

Mr. GAMBLE. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from South Dakota?

Mr. QUARLES. Certainly.

Mr. DUBOIS. I will answer the question if the Senator from Wisconsin will allow me.

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from Idaho?

Mr. QUARLES. I yield to both Senators.

Mr. DUBOIS. No; the Senator asked me a direct question, which I will answer. No good could come to South Dakota by having speculators go there and take this land, and speculators will not go there if they have to become homesteaders; but they will go there if you sell them the land for \$2.50 an acre. That is the experience we have had all through the West among those who are familiar with the opening of Indian reservations. I have had it in my own State.

Mr. GAMBLE. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from South Dakota?

Mr. QUARLES. With pleasure.

Mr. GAMBLE. It is not true that the settler upon these lands, or upon any Government lands under the home-

stead law, that being the only law now in force, is obliged to live upon the land, to maintain a permanent residence thereon to cultivate the land, and if he does not he thereby forfeits his right? Is not that the existing law?

Mr. STEWART. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from Nevada?

Mr. QUARLES. Directly, after I have the pleasure of answering the distinguished Senator from South Dakota. I wish to answer him. I would not want to do him the discourtesy of failing to answer his question even to yield to my distinguished friend the Senator from Nevada.

That is undoubtedly true theoretically, as stated by my friend from South Dakota. Theoretically, the settler has to go in and he has to put up a habitable place for a man to live. That costs very few dollars. He comes in there and puts that up and he has a foothold. He has not put a plow into the furrow at all, and in a year's time, for instance, an actual settler comes along and he makes an arrangement with him, and out he goes. My proposition is that the State of South Dakota is not benefited by the intervention of these people, who come in not with the intention of settling, but with the intention of speculating on the land; that it is a positive detriment to the State; that it would be better for the Government to deal in the first instance directly with the permanent settler.

Mr. STEWART. Mr. President, the Senator from Wisconsin has answered the question substantially as I should have done. I merely wish to emphasize it. It is very easy for a man, if he gets the land, which there is a prospect will be worth more than \$2.50 an acre, to hold on, and he will find somebody who wants it, and he commutes, and gets the deed. That is the practice.

Mr. QUARLES. Certainly.

Mr. STEWART. It may not be true, but my informa-

tion is that it has been done in almost the majority of cases where reservations have been opened. Wherever the land is worth more than \$2.50 an acre, all he has to do is to hold on and a man gives him money to commute, and he commutes and he gets the deed.

Mr. QUARLES' When the President has issued his order for the opening of this reservation, I guarantee you can go out on the confines of the reservation and find the same fellows located there who were in Oklahoma in the great race they had there or who were at the opening of the Kiowa and Comanche strip when it was done by the instrumentality of a wheel of fortune.

Mr. GAMBLE. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from South Dakota?

Mr. QUARLES. Certainly.

Mr. GAMBLE. It is not true that where a settler has once filed upon a piece of land he is precluded from making a second filing, and in order to avail himself of a second filing he must make oath that he has not received the benefits of the homestead or other law, or any benefits? And, enlarging perhaps upon the interrogatory, how can it be that there is so large a number of speculators as the distinguished Senator states? I live out in that region, and have lived there for twenty-five years, and I have not observed the conditions to which the distinguished Senator refers.

Mr. QUARLES. My friend might live in the quiet seclusion of South Dakota for many years and never see the faces of the class of speculators to whom I refer any more than we would see them in Wisconsin; but once let the President of the United States issue his proclamation that this great reservation in South Dakota is going to be opened, and I will guarantee that my distinguished friend will see those people to his heart's content, for they will certainly be there.

Mr. STEWART. Mr. President—

Mr. QUARLES. I do not feel at all proud at the idea that the benefactions of this great Government are to be dispensed with a wheel of fortune. I never have, and I insist that business principles are far better. Their influence is more wholesome on the public. Let us sell these lands to the actual settlers in the first instance for exactly what they cost us, and then we will be following true principles, business principles, and it will be better for the Government and better for the State of South Dakota.

Mr. STEWART. The practice of using dummies to evade the land laws has been in vogue under all systems. The preemption laws were frequently evaded in that way. Good land, worth much more than the Government price, is very tempting to speculators. It is alleged that dummies are sometimes used under the homestead law where the right to commute exists, and under that law any person who will take the trouble may claim a homestead, hold it until some bona fide settler wants it, obtain the money from him, and commute it and convey it to the settler at a profit to the speculator.

Mr. QUARLES. Just one word.

Mr. JONES of Arkansas. Will the Senator from Wisconsin allow me to ask him a question?

Mr. QUARLES. Certainly.

Mr. JONES of Arkansas. Do I understand the drift of the Senator's argument to be in opposition to the homestead laws altogether?

Mr. QUARLES. Oh, not at all.

Mr. JONES of Arkansas. In what, then, does this differ from the ordinary homestead laws? Under the homestead laws on any land belonging to the Government of the United States a citizen who has not had the benefit of the homestead law may locate a homestead. Now, as I

understand, under this bill he can do exactly the same thing. What difference does it make to the Government whether the land is derived by purchase from France or from an Indian tribe? If the land is a part of the public domain, and the law stands as it has been for years, why not allow any citizen who has not had the benefit of the homestead law to locate a homestead on any land, no matter whence it comes? I do not understand the Senator's idea—why this land should be differentiated from the public domain in other places.

In the matter of commutation there is this difference: A person can commute ordinarily under the law at a dollar and a quarter. It is put at two dollars and a half in this bill. I think that is wise. My own idea would be to strike out the commutation feature so far as this reservation is concerned, and require the people to live for five years on the land and not allow them to commute, and to permit them to get their deeds at the expiration of the five years.

Mr. QUARLES. The suggestion of the Senator from Arkansas may have value. His suggestions usually have. I do not know but that the proposition to prevent commuting entirely is worthy of attention.

Not to take the time of the Senate unduly, I wish to say in conclusion that this is a matter of policy; whether we shall tax the people of this country from \$50,000,000 to \$75,000,000 in order that land may be given away. That is the proposition. I am not willing to subscribe to it. I think the policy is vicious. It is a paternal system of doing things which does not increase the industry of any section, and in my humble judgment the better way would be to let the people pay for the land what the Government has paid for it.

Mr. JONES of Arkansas. But, if the Senator will permit me to make a suggestion—of course, I do not want to

make a speech—the United States Government did pay \$15,000,000 for certain lands, most of which, or a very large part, have been given away for homesteads under the policy of the Government of undertaking to provide homesteads for all classes of citizens who have no homes. It seems to me it should make no difference whether the land is derived by purchase from France or from Indian tribes or however it may become a part of the public domain. If the homestead laws are wise and beneficent and proper, there is no reason why those homestead laws should not apply to all public domain, it makes no difference whence it comes.

Mr. PLATT of Connecticut. In reply to the suggestion of the Senator from Arkansas, I do not think he can show that this Government ever bought lands and thereby extinguished the Indian title with the particular intent of giving those lands away to anyone.

Mr. JONES of Arkansas rose.

Mr. PLATT of Connecticut. I will explain myself a little further. We did pay \$15,000,000 for the Louisiana purchase, as we have paid for all the land we have taken from other countries; we did pay trifling amounts of money to extinguish the Indian title over a large portion of the Louisiana purchase; but at that time we were not giving away land, and we neither paid France for it nor extinguished the Indian title in order to give away the land. The laws then provided that the land should be paid for, and so on up to the time of the homestead law, and since the homestead law we have never been buying lands for the particular purpose of giving them away. We made a new departure in our policy—

Mr. JONES of Arkansas. Will the Senator allow me to make a suggestion?

Mr. PLATT of Connecticut. Certainly.

Mr. JONES of Arkansas. We have extinguished the

Indian title for the purpose of making the land a part of the public domain.

Mr. PLATT of Connecticut. Yes, sir.

Mr. JONES of Arkansas. The general law provides how the public domain shall be disposed of, and when we have extinguished the Indian title and made the land a part of the public domain there is no reason that I can see, and the Senator does not point out any, why it should not be treated as are other lands.

Mr. PLATT of Connecticut. When we extinguished the Indian title we extinguished it in order to sell the land to the people, and that is what should be done now.

Mr. DUBOIS. Mr. President, I could not quite understand the contention of the Senator from Wisconsin [Mr. QUARLES], speaking to the bill under consideration. It clearly to my mind would invite speculators more surely if the land was to be sold for \$2.50 an acre than if the settler was to go there and take up the land under the homestead law. I fear that some Senators are confusing the very rich lands of Oklahoma with the lands in Indian reservations in the West. There is not going to be any very great rush, I imagine, for these lands in South Dakota. I know it is true of Indian reservations in my own State, and the lands there are quite rich. In Oklahoma it was an extraordinary occasion. Anyone who will go out there and live on a piece of land among the Indians and suffer the privations of the frontier for five years is entitled to have it for nothing; and if anyone will take up a homestead and undertake to do this, and at the end of five years can sell it at a profit, goodness knows he ought to be allowed to do it.

Now, in regard to the matter of policy, the Senator from Connecticut [Mr. PLATT] says the free-homes bill did not establish any settled policy; that it expressly provides that it shall apply to reservations which have

already been opened. That is true; but it sets a precedent which, in my judgment, we ought to accept as a settled policy. I do not see how anyone in this Chamber who voted for the free-homes bill can, with thorough consistency, refuse to extend the homestead act to reservations which are to be opened in the future.

I can see the confusion and the struggle going on in the minds of members of the Indian Committee, and I understand the dilemma in which the chairman is placed, and if he will agree to protect me from the Indian Rights Association, I will say what I think ought to be our settled policy.

It should be founded on the free home. Then we should send our agents, not to treat with the Indians, but to go out there and to do the very best thing for the Indians. They should make a proper appraisement of their land. Take an Indian reservation containing a million acres, which is the case in a number of instances, with not more than a thousand or fifteen hundred Indians on it. The Indians are not doing anything with the land at all. It is useless. Their treaties are expiring, so that they will not have annuities any longer. The treaties are expiring by which we feed them, and they are coming to starvation. Let these men appraise part of their lands and sell them for the benefit of the Indians.

I am opposed also to giving the Indians money directly. That is a new policy, a policy of recent years. It does more to demoralize the Indians than anything else. It does them no good. The proceeds of this land, when it is appraised and sold, should be put aside for the benefit of the Indians.

Mr. TILLMAN. Mr. President—

Mr. DUBOIS. Excuse me for just a moment. Then the land should be thrown open to homestead settlers. In some instances, of course, you will find reservations near

towns and cities or for some other reason where the lands will be very valuable. In that case the agents of the Government could fix the lowest price at which the lands should be sold, and in an extraordinary case of that sort you could reimburse the Government and give the balance of it to the Indians.

Now, generally that would be my policy, and I think we have about come to the time when we should cease to go through the farce of treating with the Indians. Every Western man and some Eastern men who are familiar with it, like the Senator from Connecticut [Mr. PLATT], know this to be true. I stated it yesterday, and I will state it again. When a commission is sent out to treat with Indians for a cession of their land there is a pressure from all sides to get any sort of an agreement, no matter what it is. The Indians are pretty cunning. They understand that and put the price up way beyond what the land is worth or ever will be worth, and they insist now in addition in these later days that the money shall be paid to them directly. I think it ought to be stopped.

Mr. TILLMAN. I was going to direct the Senator's attention to a condition of affairs which occurred in Oklahoma, to this effect. The city of Pawnee, which is about seven or eight years old already, has about seven or eight thousand people in it, and there is a very rich farming country behind it. But just across a big road running on one edge of that city is an Indian reservation, and the proposition will soon come from the pressure of whites to get onto that land and get a title of some kind to it that the United States must extinguish that Indian title, and either open the Pawnee Reservation to homesteads or provide some other method by which the white man may get his grip on it.

Undoubtedly this land, lying right across a street, you may say, on the edge of a city, is worth already \$3 or \$4

or \$5 an acre, \$300 anyway, and land a little ways back, in fact land all around for miles and miles, is worth from \$20 to \$50 an acre to farmers who can go in and make their crops.

Now, the Senator says the Indians ought not to have the money direct; that it is an injury to them; and all that kind of thing. You speak of having a commission appointed who shall sell the Indian lands for the benefit of the Indians, as I understood the Senator said.

Mr. DUBOIS. Yes. Of course, as I said, there are some exceptions. I was speaking more particularly with reference to the Western Indians and their reservations.

Mr. TILLMAN. There are Indian reservations and Indian reservations. The Oklahoma situation of course is different from almost any other, because of the exceeding fertility of those lands and their very valuable character and all that kind of thing.

Mr. JONES of Arkansas. Of what reservation does the Senator from South Carolina speak?

Mr. TILLMAN. I do not know its name. I suppose it is the Pawnee, because the town is called Pawnee. The Indian reservations are dotted about there yet. I saw one at Shawnee, where I went to the Indian school or the mission or whatever is there. They told me that the braves were out on some creek 3 or 4 miles off holding a corn dance, praying to the Great Spirit to come and drive away all the white men who were interfering with them.

The question I want to have settled is whether the taxpayers of South Carolina are to be made to put their hands into their pockets to provide money to buy land which is to be given to somebody. That is what I am after. The general theory of homesteads to be donated to bona fide settlers was very good in the past when this great domain was wilderness and people were rushing over from Europe to advance our flag of civilization

across the continent. But we have gotten to the point where we have taken up all of the land desirable for farms. We have reached the arid region where agriculture needs irrigation, and the Senator and his colleagues here proposed and we all, without any opposition, passed a bill a little while ago providing that the proceeds of the sales of public lands should be devoted to a fund for developing irrigation.

Yet you propose to give away the land in the Rosebud Reservation, which is so near the border of the rain belt that people are willing to risk the danger of going in there and trying to establish a farm, although they may lose one crop out of three, or two out of three, or one out of two. But the general proposition which faces me is what are we going to do with these millions of acres which are in reservations scattered from Wisconsin westward. Are we going to continue to buy the lands and then open them and give them away?

Mr. DUBOIS. Certainly.

Mr. TILLMAN. The Senator from Idaho says certainly, because he lives there. I will ask the Senator where he is going to get the money for his irrigation scheme if he is going to give all the lands away? What was the use of our passing the bill providing for the setting apart of every dollar received from the sale of public lands for irrigation purposes? Under the Senator's programme there would be no money coming in at all.

Mr. DUBOIS. Does the Senator from South Carolina pretend to stand there at his seat and say all the public lands in the West are embraced in Indian reservations?

Mr. TILLMAN. No; I am not that big a fool, although I am a pretty big fool at times.

Mr. DUBOIS. Then the proceeds will come from the sale of lands not in Indian reservations.

Mr. TILLMAN. Ah, yes; but all of those lands which

are fit for homes are pretty well taken now. There are millions of acres of arid lands out there, on which there are buffalo grass and sagebrush and other growth, that will furnish a bare living for a cow or a sheep on 4 or 5 acres; and they will be there in the sweet bye-and-bye. They will be there forever, without any chance for anybody to get a living on them except by fencing them in or having a few herds roaming about.

Mr. DUBOIS. I will say to the Senator from South Carolina that there is more agricultural land in the Snake River region, Idaho, outside of Indian reservations, than there is in South Carolina.

Mr. TILLMAN. You mean land that will produce a crop?

Mr. DUBOIS. Every year.

Mr. TILLMAN. Every year?

Mr. DUBOIS. Yes.

Mr. TILLMAN. What is the matter with it, then, that people will not go to it?

Mr. DUBOIS. They will go to it when the irrigation bill is in operation.

Mr. TILLMAN. Oh! You have to help God Almighty and furnish some water. You must have money to do it, and you have to put the water over the land before it becomes agricultural land. I consider land that will not make a crop without artificial help as not agricultural land. You can not pretend to claim that land which needs irrigation is arable. It is not arable, because while you may put the plow into it, the crop is the true test of arable land.

Mr. DUBOIS. I should like to ask the Senator from South Carolina if he considers land covered with timber agricultural land?

Mr. TILLMAN. When you clear it it is.

Mr. DUBOIS. Oh!

Mr. TILLMAN. It is forest first.

Mr. DUBOIS. Yes.

Mr. TILLMAN. But one is an artificial and the other is a natural condition. The mere effect of the labor necessary to clear away the forest is one operation in preparing the soil, but irrigation is an artificial condition, produced by the use of large capital, for the purpose of furnishing water, something that God or the climate or meteorological conditions furnish elsewhere.

But the point I wish to have settled is this: Here are these reservations, containing three or four or five—I do not know how many—million acres, but I see the maps we get from the Land Office dotted about with squares and circles and other shaped patches of yellow or red or something of that sort, indicating how many of these Indian reservations still remain.

Undoubtedly the Indians, when they were corralled or pushed into a location instead of roaming at will, selected the best lands—lands that suited their purposes best. They usually went where the timber was, and land will not grow good timber unless there is water. So we may say that all the Indian reservations remaining in the arid region are the best lands out there, and they are going to cost us money. The question is. Are we going to buy them, the United States furnishing the money from the taxpayers of the country throughout the United States, in order to give them away? I do not believe there is any justice in that proposition myself.

Mr. CLARK of Montana. Mr. President, there seems to be considerable misapprehension in the minds of some distinguished Senators in this Chamber with regard to the operations of the laws which are now on the statute books of this country allowing the acquisition of title to the public land. It has been said by several of the gentlemen who have spoken upon the question that all

sorts of fraud are perpetrated. This is no doubt to some extent true. I believe there is scarcely a law enacted by the Government or by the respective States in which there is not an attempt at fraud in the operations of the law. But we have upon the statute books today a law regulating homestead entries, and, as I understand it, any qualified American citizen can go upon the public land and locate 160 acres under the homestead law and by a residence of five years he can acquire title to it.

These lands that it is suggested we shall purchase from the Indians—for undoubtedly they belong to the Indians to-day, in most cases at least—are no exception to the general rule. As it has been said, when the proclamation of the President shall have been made throwing open the lands for public settlement men may rush in there in great numbers. I have no doubt that will be the case, because most of these Indian lands of which I have by personal observation acquired a knowledge are very valuable for grazing and for agricultural purposes. But the law relating to the acquisition of title by homestead or by any other method has most stringent provisions whereby fraud can not be practiced except through perjury and subornation of witnesses. Now, there is a remedy for this. There is a penalty for it, and I can not understand why in the endeavor to secure title to homestead interests under the provisions we are now discussing there should be any more latitude for the practice of fraud than exists to-day under the laws providing for homestead entries.

I know nothing about the operations of the lottery system to which the Senator from South Carolina has alluded, but I do believe that any man or woman who may be privileged to make a selection of that kind by lottery would have to show a proper qualification just the same as he or she would have to do if they attempted to make a location under the laws existing to-day.

Mr. JONES of Arkansas. It is to be done in accordance with the laws.

Mr. CLARK of Montana. It is to be done in accordance with the laws on the statute books. I have lived for the greater part of my life in the Western country; I have seen the endeavors of citizens of the United States to acquire title under the preemption laws, under the desert-land act, and under the homestead act, and I have never yet found a condition of things existing such as has been graphically described by the Senator from Wisconsin [Mr. QUARLES].

Mr. President, there may be some speculators who would attempt to locate some of these lands for the purpose of selling them to others who might succeed them, but if they did they would violate the laws of the land, and that entry would be canceled by the General Land Office. Practices of this kind are occurring, but universally they fail of accomplishment. I have known a great many entries to be canceled for that reason. After the first filing on a location under any of the above-mentioned acts relating to the entry of lands on the public domain the right of the locator is exhausted, and any attempt thereafter to repeat it would subject the individual to criminal prosecution.

There is a part of the Crow Reservation, in the State of Montana, which was thrown open to settlement a few years ago, the title to the lands having been relinquished to the Government by the Crow Indians. It embraces a territory some 5 or 6 miles in width and 20 or 30 miles long, lying on either side of Clarks Fork of the Yellowstone River. That land was lying there, just as the land lies in most of these reservations in the Western country, uncultivated and unused and unnecessary for the wants of the Indians. It was thrown open to settlement and homesteaders came there and made

locations, and they have made that desert blossom as the rose. For 15 or 20 miles a visitor may go and see the land reclaimed and brought under a successful state of cultivation. The most beautiful wheat fields and other cereal fields may be found there flourishing to-day. They have built up a large and a useful community, contributing their share to the world's wealth. I know personally a number of those people, and I believe that they represent a type of manhood and of citizenship as high in standard as can be found anywhere in this country. Of those men, all that I know, and all concerning whom I have ever heard—and I am very familiar with that part of the country—took up the land in good faith, and they have settled on and improved it and made it worth from \$15 to \$30 an acre.

It is true that a number of them commuted their homesteads after two or three years, when they became able to do so, by selling the product of their farms; but generally it was not done for the purpose of selling out their holdings, but in order to be sure about the titles and have them confirmed, so as to know that for their little holdings, upon which they had been struggling for some years to make homes for themselves and their families, they were to have a tenure that was durable and permanent to them.

Now, Mr. President, as to the purchase of these lands from the Indians by the Government of the United States, I think generally it is provided that the proceeds shall be applied for the amelioration of the condition of the Indians, to enable them to buy live stock, to enable them to build grist mills, and to fence their premises, where there is danger of invasion, and for other useful purposes. If the Government did not purchase their lands, I think in most cases it would be obliged, as it is now doing to-day in many instances, to pay annuities to these

Indians and to feed them and to clothe them, and, really, in many instances, to pauperize them. We had better, by far, give them the implements of agriculture and horses and cattle for breeding purposes and let them work out a living for themselves.

So I take it that the money which will be expended in the relinquishment of the titles to these Indian lands will be held in trust, or will be expended under the direction of the Secretary of the Interior for the benefit of the Indians, and it is not a parallel to a case where the Government would go outside and purchase lands for the purpose of throwing them open to free settlement. Having once acquired the title to these lands, whether by purchase or by any other means, I believe it to be the duty of the Government to throw them open to settlement as free as any other portion of the public domain. Why should they discriminate as to the manner of entry? If it is thought wise to buy these lands at a reasonable price, let them be thrown open and let the law be uniform as to all the holdings of the United States. In this respect the constituents of the distinguished Senator from South Carolina have as fair and equal opportunity as those who live in the immediate vicinity of the lands to obtain homes for themselves, where they may rear and educate their children. I believe in the policy of throwing open these lands for free entry to the struggling yeomen of the country, where they may establish happy homes, enjoy the fruits of their own industry, and thereby contribute to the advancement of civilization to the great empire of the West and likewise to the wealth of the nation and of the world.

Mr. HANSBROUGH. Mr. President—

Mr. PLATT of Connecticut. It is very evident that this discussion can not be completed this morning.

Mr. COCKRELL. It is nearly 2 o'clock.

Mr. PLATT of Connecticut. I simply rose for the purpose of asking that the same order with reference to the bill might continue to-morrow morning that existed this morning.

The PRESIDENT pro tempore. The Senator from Connecticut asks unanimous consent that after the routine business of the morning hour to-morrow the Senate shall proceed to the consideration of this bill.

Mr. PLATT of Connecticut. I think it can be disposed of in another morning.

Mr. TELLER. I wish to give notice of an amendment which I shall offer at the proper time.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Connecticut? The Chair hears none.

Mr. TELLER. I think the Senator from Wisconsin who addressed the Senate can avoid all danger of appropriation by these traveling settlers he talks about, which I suppose exists somewhere, but I have never seen any of them in my experience in the West, by not allowing any homestead commutation at all on these lands. If the settlers are required to live five years, the people who ought to have the lands are sure to get them. I wish to move an amendment to the amendment of the Senator from Connecticut by striking out, on page 6, all of the twenty-fifth line after "entry," and lines 1, 2, and 3 on page 7, and then inserting:

No person taking a homestead under the provisions of this act shall be allowed to commute under the provisions of section 2289 or section 2301 of the Revised Statutes.

I ask that the amendment be printed.

The PRESIDENT pro tempore. The amendment will be printed and lie on the table.

Mr. TELLER. I will have something to say on the subject to-morrow morning.

The PRESIDENT pro tempore. The Chair lays before the Senate the unfinished business, which will be stated.

[35 Cong. Rec. 4911-4918 (1902)]

AMENDMENT WITH INDIANS OF ROSEBUD RESERVATION.

The PRESIDENT pro tempore. The Chair lays before the Senate Senate bill 2992.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect.

The PRESIDENT pro tempore. The question before the Senate is on the amendment offered by the Senator from Connecticut [Mr. PLATT].

Mr. PLATT of Connecticut. Mr. President, I know the Senator from Missouri [Mr. COCKRELL] desires to submit some observations upon this matter.

Mr. HANSBROUGH. Mr. President—

Mr. PLATT of Connecticut. The Senator from North Dakota, I understand, desires to address the Senate.

Mr. HANSBROUGH. Mr. President, I listened with a great deal of interest yesterday and the day before to the discussion of this measure. The debate took a very wide range, altogether too wide, I think, because some of the Senators undertook to criticise the action of the Interior Department in disposing of the lands in Oklahoma and others seemed to assume that quite all of the people who go into the Western country in search of homes are speculators and men of bad character.

I was particularly interested in what the Senator from Wisconsin [Mr. QUARLES] had to say on this latter subject. It is true, doubtless, that the great army of home seekers who have gone out on the Western plains have, from time to time, been followed by a class of people who might be denominated as speculators. The fact is

that no army ever moves in any enterprise that is without its camp followers. But as to the intimation that most of these people, or any considerable number of them, are speculators, I desire here and now to make my protest.

I do not know how it was in the State of Wisconsin or in the State of Michigan or any other State where the principal interest is pine lands. I do not know if the speculator dominated the disposition of the pine lands in Wisconsin. Perhaps I ought not to refer to the methods under which those pine lands were disposed of or compare the class of men who go into the country west of the Mississippi River to seek homes upon the prairies with the class of men who have remained in the State of Wisconsin and other pine-land States and taken possession of the pine lands. But I imagine that if an investigation was had it would develop that there were quite as many speculators in the pineries as there are to be found upon the prairies of the West.

Now, a word with respect to the methods under which these Indian lands are disposed of. The Senator from South Carolina [Mr. TILLMAN] yesterday criticised the methods employed by the Interior Department in disposing of the lands in Oklahoma and found fault with the plan known as the lottery plan.

Mr. President. I do not favor lotteries as a general thing. Indeed, while I was a member of the House of Representatives I introduced and had passed in that body what is known as the anti-lottery bill. That bill became a law, and under that law the Louisiana lottery has practically gone out of business. So that I am not, generally speaking, in favor of lotteries. But I submit that under the circumstances, with the great pressure that exists on the part of the masses of the people who are seeking for homes whenever there is vacant land, it was utterly impossible for the Interior Department to dispose

of the lands in Oklahoma in any other way than by the method which was adopted; in other words, by the lottery plan.

Mr. TILLMAN. Mr. President—

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from South Carolina?

Mr. HANSBROUGH. I yield.

Mr. TILLMAN. The point I tried to make was not so much against the lottery as against the condition which resulted from the lottery, and that was that the speculators or persons who really had no intention or purpose of settling on the lands and making homes rushed in to get advantage of the benefaction or largess of the Government in opening the land to settlement by homesteaders. If the Senator can devise any scheme by which no one but bona fide home seekers, men who have no homes and want to get homes, will be alone allowed to receive the benefits and to make application for homesteads. I can see that such a scheme, if it can be devised, would largely reduce the danger of any future lottery.

The condition which I brought up here was that we ought not to subject ourselves to the charge of injustice to the taxpayers by buying land for which we pay two, three, five, or ten dollars an acre, whatever amount it may cost, and then turn around and give it to a lot of people who do not need it and who are better off than some of us, who rush in and seize upon the opportunity to make a homestead entry. If they draw a prize, they will go and locate, and then they will hire somebody to go in and do whatever is necessary to preserve their homestead rights, and as soon as they get a chance they turn in and sell their claim and get the profit and go about their business, so that the taxpayers are fleeced and the home seekers are robbed of the opportunity to obtain homes. That is the idea which, if the Senator will

elucidate, will benefit us a great deal more, I think, than to discuss the question of lotteries.

Mr. HANSBROUGH. Mr. President, I hope to reach that phase of the case before I have concluded, but I desire to say a further word with respect to the lottery system. I think it would have been utterly impossible for the Secretary of the Interior to have disposed of the lands in Oklahoma and on other reservations in any other method than by the lottery method, because there were probably 50 people on the ground for every 160 acres of land to be disposed of in that country. Now, I ask the Senator from South Carolina and other Senators, How are you going to select from that number of people the particular individual who shall have the right to take and occupy 160 acres, if not by the lottery system?

Mr. TILLMAN. If the Senator will permit me, I can see the difficulty of the Government officials undertaking to differentiate or to pick out from among the applicants for homesteads those who are bona fide and those who are not, but if the land has a price fixed does it not at once eliminate to a great degree the speculative applicants? Will any gambler be there seeking a homestead if he has got to pay some money? Is it not the gambler who expects to get something for nothing, who is on hand in these large numbers seeking to elbow away and to shove aside the actual bona fide applicant for a homestead, who is poor and wants to get some mother earth under this feet and get a title to it?

Mr. HANSBROUGH. Well, Mr. President, I do not believe—

Mr. TILLMAN. Will not putting a price on the land have a tendency to eliminate the speculator?

Mr. HANSBROUGH. I think not. Wherever the land is valuable there is going to be a very large number of people who are ready to buy it. Then comes the question

as to who shall be entitled to make the purchase. Suppose again, that if there are fifty men on the ground—

Mr. TILLMAN rose.

Mr. HANSBROUGH. I do not want to yield just now. We will suppose that if there are fifty men on the ground to each 160 acres of land, and all of them will have to pay \$2.50 or \$3.50 or \$5 an acre for the land, to which individual will you give the right to enter upon that land and make payment if not by the lottery system?

Mr. TILLMAN. Will the Senator allow me now?

Mr. HANSBROUGH. Certainly.

Mr. TILLMAN. In competition for any given land the easiest way and the only sure way to settle it is to put it up to the highest bidder, and if instead of a lottery to determine who shall by chance have the privilege of getting a homestead, if these lands are valuable, you simply say, "Well, here, lot No. 7 is for sale. Bid up for it." If John Smith wants it at \$2 and nobody else wants to give any more, let John Smith have it: and so on through the line. You can eliminate the injustice which now obtains by the lottery system by letting the land bring what it is worth and letting the money come back to the United States which has bought it or have bought it. I do not know how to get that noun down to a singular verb, but I believe the courts have decided that the United States are to be considered as is, or in the singular, We can determine that question very readily and easily and without any friction by simply saying that the lands on a given reservation, having been purchased by the United States and there being more applicants than there are homestead entries, we will, instead of having a fixed rate for all of it, put up each lot separately and "let the longest pole get the persimmon."

Mr. HANSBROUGH. I am afraid that under that system the Senator from South Carolina and myself

would fare very poorly as against the class of gentlemen who have more money than we have. I think they would outbid us and we would come away without having procured any land, especially in the case of Oklahoma, where I understand the lands are to-day worth from \$30 to \$50 per acre.

I call the attention of the Senator from South Carolina to the further fact that right here in this body we decide who shall have seats, sometimes, by the lottery system.

Mr. TILLMAN. I have never known it to be done since I have been here.

Mr. HANSBROUGH. We are obliged to do it.

Mr. TILLMAN. I have never known it since I have been here.

Mr. HANSBROUGH. We are obliged to do it.

Mr. TILLMAN. I have never known it since I have been here.

Mr. HANSBROUGH. It has taken place.

Mr. SPOONER. That is because it has not been done since the Senator came here.

Mr. TILLMAN. Was it ever done?

Mr. SPOONER. Yes.

Mr. TILLMAN. When?

Mr. SPOONER. When two Senators—

Mr. TILLMAN. It is done in the House, but this body being a continuing body, without ever dying, and there always being old Senators here who have gotten the best seats, the new ones have to take what is left. It is "first come first served."

Mr. HANSBROUGH. When the State of North Dakota came into the Union, and two Senators were sent here, there was a question who should occupy the two years' term and who should fill the four years' term.

Mr. TILLMAN. That is the term and not the seat.

Mr. HANSBROUGH. And that was decided by lot.

Mr. TILLMAN. I say, Mr. President, if I may be permitted—

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from South Carolina?

Mr. HANSBROUGH. I shall be obliged to do so.

Mr. TILLMAN. That was a question of the tenure of the two Senators elected at the same time, as to which should have the short and which should have the long term. I thought the Senator was referring to our chairs here.

Mr. HANSBROUGH. I do not care to prolong the discussion on the lottery aspect of this case, and I will now refer to the bill under consideration.

I think that each of these cases should be allowed to stand upon its own merit. In the case of the Rosebud Reservation I understand that the lands perhaps are not worth \$2.50 an acre, the price specified in the bill, and if this bill is passed with that provision in it there is grave doubt whether the lands would be in such demand by settlers as to cause them to be taken by those who are seeking homes in the Western country at the present time.

If there is any such doubt, Mr. President; if there is a probability that there would not be sufficient demand for these lands to cause their occupation by settlers for the purpose of cultivating them and making farms of them, and with the additional purpose of putting white people among the Indians, with a view to their further civilization, then I believe it would be well to eliminate the provision under which it is proposed that \$2.50 an acre shall be charged, and allow them to be taken under the free-homestead clause.

I am inclined to think that the amendment offered by the Senator from Colorado [Mr. TELLER] on yesterday should be adopted, eliminating the commutation clause

of the homestead act so as to require the settler who goes upon the land to live there five years, and thus eliminating the possibility, to a great extent anyway, of speculation. Of course, after a settler has lived there five years and has acquired title you can not prevent him from selling the land to some man who may want to buy a whole township, but if you have required him to live there five years, the Government has done its uttermost to prevent speculation. For that reason I think a provision should go into the bill eliminating the commutation clause of the homestead law.

I think that each one of these cases should stand upon its own merits, because in the different reservations there are no two cases alike. The land in the Rosebud Reservation is not of a quality which attracts settlers, whereas in my own State, in the Devils Lake Reservation, where we are proposing to throw open about 101,000 acres of land, the lands are worth to-day at least \$15 per acre. I think it is no more than fair that the settler upon those lands should pay the price that the Government pays the Indians, and for that reason I yielded to the amendment offered by the Senator from Connecticut when that bill was up for consideration and allowed the free-homestead clause to be stricken from the bill, although the bill had been drawn by the Interior Department and the free-homestead clause inserted.

To-day, Mr. President, there are at least 1,000 people in the vicinity of that reservation anxiously awaiting the passage of the bill so that they may go upon those lands. When the time comes for them to go upon the lands it will be found that there is room for about 650 entrymen, and there are fully a thousand people on the ground now waiting to take advantage of the opportunity of securing a home there. So it would be absolutely necessary, if I may be allowed again to refer to the lottery phase of this

case, for the Secretary of the Interior to provide some method whereby these people may decide by lot as to who shall take advantage of the opportunity.

Mr. President, there was a time in the history of this Government, when the homestead law was enacted, when the preemption law was enacted, and when the timber culture law was enacted, when the Government of the United States was looking in every direction for settlers with whom to populate the public domain of the country. But that time has gone by. At the present moment the settler is soliciting the Government to secure a home for him. The arable public domain of this country is about exhausted. There is but very little of it left at the present time.

It was for that reason that the Senators and Representatives from the arid and semiarid States at the beginning of the present session of Congress got together and formulated the bill known as the irrigation bill, which passed this body some months ago unanimously and which now reposes in the sacred keeping of the leaders of the other branch of Congress. The purpose of the framers of that bill was to provide homes for the home seekers of the United States.

My attention was called recently to a most peculiar situation. Owing to the scarcity of lands in the Western States at the present time thousands of people are now going into Manitoba and the Saskatchewan country, in Canada, to secure homes—leaving the United States and going to a foreign country to secure lands. Could there be any better argument in favor of an irrigation bill, so that we might provide homes for these people and keep them here, keeping our own citizens in the United States?

A prominent official of one of the leading railroads of the country told me the other day that 7,000 people from the State of Iowa had gone to Manitoba in the past

sixty days to find homes, which they could not find on this side of the line. I would be surprised if anyone should tell me that any man from the State of Iowa should stand in the way of the passage of the irrigation bill, so that the people who are now going from the State of Iowa to Manitoba and elsewhere in Canada might remain here as citizens of the United States.

So, Mr. President, without prolonging this debate, I want to say in a word that I think in the case of these Rosebud lands, if the Senators from South Dakota think the lands could not be readily sold for \$2.50 an acre, perhaps an amendment might be put into the bill providing that they shall be sold for \$1.25 an acre. If the Senators from South Dakota think that settlers would not be attracted by fixing the price at \$1.25, then I think the land should be purchased and thrown open and settlers should be allowed to go in and live there five years, without paying anything whatever for the land.

Mr. TILLMAN. Mr. President—

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from South Carolina?

Mr. HANSBROUGH. I was about through, Mr. President, but I yield.

Mr. TILLMAN. I would ask the Senator, if he supposes there is any doubt about the bona fide settlers being willing to buy these lands at the upset price, what need is there to open up this reservation? Why should we be paying this million dollars or whatever the amount is that we are going to pay to the Rosebud Indians to get land that nobody wants? Why should we pass a bill here at all? Why not let the Indians alone in the peaceful enjoyment of their reservation, and wait until the demand for homes or for more land by the Caucasians makes it desirable to open the reservation?

Mr. HANSBROUGH. Right on that point, Mr. President, I desire to say that the purpose of throwing open the Indian reservations and allowing white settlers to come in and take the lands is that the Indians may have the opportunity of mixing with the white people and learning something of our methods. I think their civilization will be thereby greatly hastened. That is the object of opening the reservation.

Mr. TILLMAN. The Senator does not, of course, expect me to believe that, though he says it undoubtedly in good faith.

Mr. HANSBROUGH. Certainly.

Mr. TILLMAN. Any man who has been in the West and who has run up against this Indian problem and the condition of those Indians, with their gradual pauperization and the absorption of their lands by the whites, knows that love of the Indian is about the smallest quality or quantity in the minds of men in the West.

Mr. HANSBROUGH. The Senator from South Carolina is constantly looking for fraud somewhere. He has always got the tail of his eye on some one whom he regards as a suspicious character, and if we come in here with any measure, no matter what the measure may be, the Senator is going to pick flaws in it.

Mr. TILLMAN. I picked no flaws in the irrigation bill; on the contrary. I got up here and advocated the passage of the irrigation bill.

Mr. HANSBROUGH. That is true.

Mr. TILLMAN. Then the Senator ought to apologize for the accusation he has just made.

Mr. HANSBROUGH. I apologize to the Senator so far as the irrigation bill is concerned.

The PRESIDENT pro tempore. The question is on the amendment offered by the Senator from Connecticut [Mr. PLATT].

Mr. PLATT of Connecticut. Mr. President, I think the Senator from Missouri [Mr. COCKRELL] desires to be heard on this matter. I have sent for him, and I hope he will soon be here.

Mr. TELLER. Whilst waiting for the Senator from Missouri, I want to call attention to the amendment I proposed yesterday, which will be found by looking at page 6, beginning in line 25, striking out the words "except that homestead settlers who commute their entries under section 2301, Revised Statutes, shall pay for the land entered the price fixed therein." The price fixed is \$2.50. I propose to strike that out; and, not going any further, that would undoubtedly leave the settlers entitled to enter their homesteads at a dollar and a quarter an acre.

What I desire to accomplish by this amendment is not to allow the homesteaders on this land to commute it. I want to avoid what the Senator from Wisconsin [Mr. QUARLES] and some other Senators seem to be disturbed about. I want to avoid speculators going in there and getting the land, and I think the amendment I have offered will accomplish that purpose, because no speculator will go in if he has got to live on the land for five years; but it will enable the poorer class of people to go in and make homesteads on this land.

Mr. President, I want to say a word or two about the complaint which has been made here that we are buying land from the Indians, paying money out of the Treasury to the Indians for the land, and then giving the land to settlers. The policy of the Government of the United States from its very organization has been that the Government was the trustee of the land for the benefit of the people; and when there did not appear to be in this country any speculative disposition the Government allowed, under the preemption act of 1842, entries under

some limitations. Before that there had been very little limitation. The settlers had been privileged to go upon the public land, pay a dollar and a quarter an acre for the land, and obtain title to any quantity they saw fit.

After 1842, and perhaps before that time, the practice was this: The settler could go upon land, live upon it about two years and a half, and then pay for it: or if he had enough ready money he could find plenty of land that had been offered for sale. The Government having offered the land for sale and not finding a bidder, it was returned and then was opened to preemption, as we called it, without any occupation of it. The settler could go and buy 160 acres of land, or any other number of acres of land which he had the money to pay for, at \$1.25 an acre. There was not under that system, which was an open system, any considerable aggregation of public land in the hands of individuals.

I have seen thousands and tens of thousands of acres of good land that could be bought for \$1.25 an acre stand in the market year after year with nobody offering to purchase it. That was true in all the States of the West. That land is worth now a great deal of money, or at least some of it is. Of late years, within the last fifteen or twenty years, or probably twenty-five years, there has been a good deal of a disposition on the part of capitalists to buy lands in large quantities.

Mr. PLATT of Connecticut. Will the Senator allow me to ask him a question?

Mr. TELLER. Certainly.

Mr. PLATT of Connecticut. I understand that originally the law was that a person could go and locate land anywhere and pay \$1.25 an acre for it.

Mr. TELLER. Yes.

Mr. PLATT of Connecticut. And he could also locate land under military bounty land warrants. But there came

a time— and I should like the Senator to explain how it was—when large tracts of land were obtained for small sums per acre. I remember in 1863, when I was out in Omaha, I was told that a man who had been a Senator of the United States had acquired under the land laws, in some way or other, several thousand acres of land which had not cost him more than 10 cents an acre.

Mr. TELLER. Where had he bought the land?

Mr. PLATT of Connecticut. In Nebraska, which was then a Territory. There had been some law in existence under which he had been able to get that land at a low price.

Mr. TELLER. I think that is a mistake as to Nebraska; but this has been the rule for many years: After public land had been offered in the market a certain length of time, the price was changed from a dollar and a quarter an acre to something less, and so on down until the price had got as low as 12½ cents an acre.

Mr. PLATT of Connecticut. Where there was no demand for the land, and it was open for entry and not taken, was it not put up at auction and sold?

Mr. TELLER. In the first place the land was put up and offered at \$1.25 an acre to the amount of many thousands of acres. After the land was put up no one would go there, because a man could go the next day and take it at \$1.25 an acre, just what he would have to bid, and after the land had been returned unsold, then it was open to any person who wanted it in any quantity. The longer settlers stayed off the land the lower the price went, until sometimes good land was sold in the State of Missouri for 12½ cents an acre. That was under what was called the graduated land act.

There was another method by which land could be acquired, and that was by military bounty land warrants, representing \$1.25 an acre in locating lands, which sold in

the West sometimes as low as 25 cents an acre. Yet, with all these opportunities, there was no considerable amount of land taken except by actual settlers.

In 1861 the Government of the United States changed its policy by the adoption of the homestead law, and allowed public land to be taken without any payment whatever, provided the settler would go upon the land and stay there for five years. Under that law there has been an immense quantity of land taken, thousands and tens of thousands of acres, and thousands and tens of thousands of homes have been made all over the West. Of course that to some extent reduced the income of the Government. These homesteaders, after they had lived on the land for the given period of time, could go and pay \$1.25 an acre and get a good title. A great many homesteaders, after they had lived the required time on the land, so that they could do so, went and paid \$1.25 an acre for the sake of having an absolute title and knowing that the property was their own. I think of all the things of which the Republican party can boast the most beneficial act of civil policy they have ever performed was when they freely donated to the people the public lands. The result was an increased settlement in the West and Northwest.

Mr. President, I have seen something of the settlement of the West in at least four or five States. I have been going back and forth through them for the last thirty-odd years—now pretty nearly forty years—and I want to say to the Senator from Connecticut [Mr. PLATT], who seems to think that these people ought to pay \$2.50 an acre for this land, that any man who goes upon one of those quarter-sections of land and makes a home there is entitled to the land without paying a single cent for it, and the Government of the United States ought to be delighted to have him do so. There is not an acre of

public land left to the United States Government, nor is there an acre inside of any Indian reservation, that the Government ought not to be glad to buy of the Indians and see some settler go on it.

Senators who live in the Atlantic States, and who were born so late in the history of this country that they have not seen that new country developed, do not know anything about what it costs to settle up a country: they do not know what it meant for a man to pioneer in the Dakotas, or in Iowa, or in Nebraska, or in Kansas, or in Colorado, or in Montana, or in any of those Western States. It is true, Mr. President, now that the lands which early settlers got for nothing may be worth \$50 or a \$100 an acre, but they have made them so. But for their presence those lands would not be worth any more than they were fifty years ago.

For myself, I have not any fear of the Government of the United States being robbed by taking in all the reservations at any price that we are likely to pay for them, and shearing them of all the land which is not needed and giving it to the settlers.

Mr. President, we have some new possessions now. We have ten or twelve million people under our control, whom we declare to be under our protection, who have had no opportunity of receiving the benefit of free homes from the Government. There are supposed to be 500,000 acres of land now owned by a religious order in the Philippines called the friars. I find in a bill pending here a proposition that we shall condemn that land, make it public land, and sell it to the people. I do not know how we are going to condemn it; but, leaving that question out of view, if we condemn it we have got to pay for it, and we probably shall pay twice what that land is really worth—twice what the Government ought to pay. My own judgment is that it would be well for us to pay

almost any price that is demanded of us rather than not get the land.

Mr. PLATT of Connecticut. What is that?

Mr. TELLER. I am referring to what are called the friars' lands in the Philippines. That subject, of course, is not touched in this bill, but I was referring to the principle of this bill, which I think ought to be applied to those lands. What we shall pay for those lands I do not know, but I should think, from the information I have, that we are likely to pay twice the amount the land is worth. I would very much prefer to see the Government buy it for twice what it is worth than not buy it at all. When the Government buys the lands at twice what it is worth, I do not want to see it sold to the people who are going to live on it at the price we buy it for.

On the contrary, Mr. President, I do not want to see it sold to them at all. Many of the occupants of this land are men who have lived upon it during all their lifetime and the lifetime of their parents before them. I believe it would be good policy for the Government of the United States to buy that four or five hundred thousand acres of land, divide it into holdings not to exceed 40 acres, and then give it to the people who are living on it. I think we could never invest a few million dollars with half the benefit and profit to us that that would be. I believe it would go far to compose the difficulties which exist there, and that it might create a friendship for the Government which can not be secured by all the armies that may march over that country with all the pomp of war. As it has been the policy of the Government for a good many years to make the land free, or so free that every man, no matter how poor he may be, can get a home upon it, I hope that principle will be applied when we succeed in securing that land. I have simply taken advantage of the pendency of this bill to say this because

I have felt like saying it for some time.

Mr. President, I do not know how much land is involved in this bill, but the more land there is involved in it, the more anxious I am that the land shall be made free—the more anxious I am that the people who go upon it shall not be asked to pay a single dollar to the Government of the United States for the title they can get by living on it. I do not believe that the United States ever in its history invested any money that has been so valuable to it and has returned such great rewards as the money invested in these and other lands, and the money that they might have collected, but did not collect, out of settlers in the West and Northwest.

My friend from South Carolina [Mr. TILLMAN], who sits near me, says that he does not want to see the taxpayers burdened by the passage of this bill. Mr. President, I have myself some little interest in the taxpayers, but I lose some of that interest in trifling things of that character from a financial point of view when I see the Government of the United States spending two or three hundred million dollars a year—\$200,000,000, at least—on the Army and the Navy, and doing so without embarrassment, when we have a great overflowing Treasury, with \$180,000,000 at the command of the financial department of the Government and \$150,000,000 more which is locked up in the banks of the country and might, so far as the Government is concerned, as well be in the sea, and that money being kept there for the supposed purpose of the redemption of some obligations of the Government, never to be used. The Government of the United States can not plead poverty; it can not plead distress, with all these great expenditures. I think I shall be safe in saying that there is not any country in the world where the people feel so little the burdens of taxation of a national character as in this country.

I hope. Mr. President, that we shall economize; but I hope that we shall not commence economizing with the settlers. I know that 8400 may not appear to be very much to members of this body; but \$100 is a great deal of money to a settler. It is more money than a great many farmers in the West ever had together at one time; and there are thousands and tens of thousands of men who have good homes and who have valuable holdings who never could have had them because they never could have raised money enough to buy them if the Government had not said, "That is free land and you may go and take it."

I do not see how anybody, when he looks over the growth of the Northwest and the character of its population, which compares most favorably with any population on the face of the earth, can think we have made a mistake in giving to these people free lands, and I can not see why anybody should be disturbed now that we are going to remit to the settler the payment of \$400 if he goes upon a quarter section of land and makes his home there for five years, as he must do under the terms of my amendment if it be adopted. As suggested to me, the Government is paying less than 25 cents an acre for this land when it buys it from the Indians.

Mr. PLATT of Connecticut. What is that?

Mr. COCKRELL. The Government pays \$2.50 per acre.

Mr. PLATT of Connecticut. Certainly; the Government pays \$2.50 an acre for the land.

Mr. TELLER. The statement I made was based on a suggestion made to me by a Senator sitting near me.

Mr. JONES of Arkansas. More than 4,600,000 acres.

Mr. PLATT of Connecticut. Four hundred and sixteen thousand acres, I believe.

Mr. TELLER. I have not looked into the details to ascertain as to that.

Mr. GAMBLE. The number of acres purchased is 416,000.

Mr. JONES of Arkansas. I thought it was 4,600,000.

Mr. GAMBLE. No; 416,000 acres.

Mr. TELLER. Suppose it is. The property belongs to the people of the United States; they are entitled to it, and they are entitled to have it in such a way as will do the most good to all of them. Of course there are tens of thousands of people who can not go and take homesteads, but they will be benefited to every homestead that is taken. There is not a man, woman or child in the United States who is not benefited when homesteads on those 116,000 acres are occupied by intelligent American citizens and farmers.

Senators who have lived in the West have seen committees built up there; they know what the settlers have had to do, taking the raw, uncultivated earth, with not a building of any kind in existence, but every building having to be erected, every road and every bridge to be constructed and to be paid for out of the hard earnings of that class of settlers. Mr. President, the very development of the country comes out of those people; and where you go over that country you see fine homes, fine farms, and fine roads, all of which have been built by the toil and the labor of the settlers; and inasmuch as a settled country is better than a desert so it is better that we should let the people go there and occupy the land, and we ought to let them go upon terms that will cover the country with population as speedily as possible.

I do not know whether this land is distributed amongst the Indians or not, but I judge it is from a remark made by one of the Senators who spoke yesterday. If, however, it is not distributed around amongst them, it is the fact that the Government in giving to these Indians their allotments withholds the lands from the operation of the

tax laws of the States. Within the last three years in the State of Colorado the Government has allotted lands to a large number of Indians, throwing open a portion of a reservation to settlement, which the people have taken. This land is to be reserved from the operation of the tax laws, according to my recollection of the treaty, for twenty-five years, during which time they will pay no taxes whatever upon personal property or upon the lands. That means an additional tax and an additional burden upon every settler who is upon those lands.

The intervening sections have been taken up, and a quantity of land on one side has been taken. They are all in the same municipal community or county, and the Indian who has thousands and thousands of acres contributes nothing in any shape or form to the development of the country. What he fails to contribute or what he would have to contribute if he were a white man living on that land, must be contributed by the white man who lives on the other land.

When all these things are taken into consideration, there is absolute justification for giving these lands to the people without compensation. Nay, more than that, Mr. President, it is an absolute injustice to demand that they shall pay any price whatever for that land; it is contradictory to the policy we have been pursuing, which is to open the public lands to the settlement of an independent farming people just as rapidly as possible.

I do hope that this bill will become a law with that provision left out of it, and that settlers may be allowed to take the land and not buy it, under the homestead law, with the exception that they shall not commute, but shall live on the land for five years.

Mr. TILLMAN. Mr. President, there is one phase of this matter to which I will briefly refer before we come to any vote, and that is to direct the attention of

Senators to the fact that we have fixed charges on the Treasury amounting to some \$1,800,000 or something like that, for the land-grant colleges. Under various acts of Congress the several States and Territories have had endowed, out of the fund received from the sale of public lands experimental stations and schools of agriculture. I want to direct attention to the fact that if we continue to give away the arable land, and if we shall have the act which was passed by this body become a law by being passed by the other body, donating all the proceeds of the public lands to be sold hereafter the irrigation scheme, unless we get some fund from the sale of the Indian reservations that are thus opened to settlement the source of endowment of the land-grant colleges will disappear and we shall be called on to take money that will be derived from taxation to support these colleges. That is well worth the consideration of Senators whose States are not interested in this matter.

Mr. GAMBLE. Mr. President—

The PRESIDING OFFICER (Mr. BLACKBURN in the chair.) Does the Senator from South Carolina yield to the Senator from South Dakota?

Mr. TILLMAN. With pleasure.

Mr. GAMBLE. It is my understanding that during the discussion of the bill passed two years ago it was directly stated that the proceeds from the sales of public lands were insufficient to support the agricultural colleges and experimental stations, and they would come directly from the Federal Treasury; and it is our understanding that for some years it has been paid directly from the Federal Treasury without any regard to the amount received from the sale of public lands. I think it has been so returned in the estimates of the Department.

Mr. PLATT of Connecticut. There has been enough received up to this time to make it good.

Mr. TILLMAN. There has always been more than enough from the sale of public lands to furnish the source of supply to keep the obligations or the implied pledge of the Government to the land grant schools. But the demand will come sometime or other, when the condition of the country is not so prosperous and taxation bears heavily upon the people, that we shall economize. If we now by legislation dispose of all the public domain the condition will be this: There will be nothing left of the arid region, because all the lands in that region are to go for irrigation, and the only remaining arable land will be Indian reservations; and if we give that away, after buying it at these prices. I want to know where the money is to come from to meet the obligations to the agricultural and mechanical colleges. We have to meet it after we get rid of all of the land, and we should not, like a spendthrift, inaugurate a policy which will bring us face to face with a donation from the Treasury.

Mr. STEWART. I call the attention of the Senator from South Carolina to a paper which I desire to present out of order. It is the memorial of Charles Polkinghorne and sundry other citizens of Nevada, remonstrating against the enactment of legislation to provide for the leasing for grazing purposes of vacant public lands and reserving all rights of homestead and mineral entry, the rental to be a special fund for irrigation.

I would suggest to the Senator that the proposition now before Congress will be worked up to a considerable extent to lease them all to cattlemen. That will dispose of irrigation and dispose of any proceeds to carry on these schools. My constituents all protest against it and hope no such measure will be passed.

The PRESIDING OFFICER. If there be no objection, the petition will be received and referred to the Committee on Public Lands.

Mr. TILLMAN. I merely call attention to this phase of the question. The present endowment of these land-grant colleges and experimental stations, amounting to \$40,000 to each—and as there are some 48 States and Territories, I believe, making something like \$2,000,000, or in the neighborhood of it—is now derived from the proceeds of the sale of public lands. As soon as we have reached that point where the few remaining patches of arable land which people are willing to purchase and undertake to use in farming operations or in any other other than grazing are disposed of, and if this irrigation scheme shall go through the House, we are going to be face to face with the loss of the endowment fund to the agricultural and mechanical colleges throughout the United States, and I am opposed to any policy which shall handicap us or handcuff us and injure those schools by destroying the fund from which they now receive their endowment and thereby jeopardize those great institutions of learning.

Mr. LODGE. I should like to ask the Senator a question before he takes his seat. He alluded, in closing, to the irrigation bill. Is it not true that the whole of that system, in the bill which we passed, rests on the proceeds of the sale of public lands?

Mr. TILLMAN. Absolutely. The proceeds of the sale of every acre of the public land in a certain list of States west of the Mississippi, and that embraces all the public land practically, will go to the irrigation scheme.

Mr. LODGE. Then the policy of this bill would, in the first place, throw the agricultural colleges and the experimental stations onto the Treasury, and then would throw onto the Treasury the entire system of irrigation that we proposed in the Senate bill; and either the irrigation system must stop or the agricultural and

experimental stations must stop, or we must make fresh appropriations for them all.

Mr. TILLMAN. I do not know that I would go so far as to say that, but I will say that my understanding of the condition is this: If the irrigation bill becomes a law all lands in the semiarid region—and that will begin with the Missouri River and everything beyond—will go to irrigation. There are some reservations east of that region involved in the irrigation scheme, but unless we have land which we propose to buy from the Indians, in order to have some money, the agricultural and mechanical colleges will be placed under the necessity of coming here and saying to us, "Appropriate out of the money derived from taxation, for the public lands are all gone."

Mr. PLATT of Connecticut. With regard to the effect of the passage of this bill upon the scheme for irrigation, the facts are just these: The bill we passed provided that all moneys derived from the sale of public lands in certain States, among which is South Dakota, should be applied for irrigation purposes, and it was also provided in the bill that if the receipts from the sale and disposal of other lands not within the States enumerated should be insufficient to support the agricultural colleges there should be appropriations directly out of the Treasury for that purpose.

So as it stands now we appropriate for irrigation purposes the proceeds of the sales of public lands in South Dakota and the other States mentioned, and the proceeds of the sales of public lands outside of those States are applied to the support of agricultural colleges; but if there is not enough derived from the sales of land outside of those States, then appropriations are to be made from the Treasury to cover the deficiency. That is the precise statement of this matter with regard to irrigation.

With reference to the Rosebud Reservation, the Government is going to pay a million dollars to the Indians. If it gets it back by selling the land to settlers at \$2.50 an acre, there will be a million dollars derived from the Rosebud Reservation to go into the irrigation fund. If the Government is going to let the settlers have the land for nothing, there will be nothing derived from this reservation to go into the irrigation fund.

Mr. TELLER. I feel a great deal of interest in the irrigation fund, but I do not want, and I know the people of my State do not want, to build an irrigation scheme in Colorado at the expense of the settlers of some other State.

Mr. SPOONER. Will the Senator permit me?

Mr. TELLER. Certainly.

Mr. SPOONER. I was not here when the irrigation bill was passed, but as I understand it the proceeds of the sales of public lands in a State are not to be devoted to irrigation in that State.

Mr. TELLER. No.

Mr. SPOONER. So the money derived from the sale of public lands in South Dakota or in any other State may be applied to irrigation in another State?

Mr. HANSBROUGH. In Colorado.

Mr. SPOONER. In Colorado.

Mr. TELLER. Under the irrigation bill, if it should become a law, which I do not think it is quite fair to hold up here now, because it is not yet a law, if this land is sold to settlers in South Dakota the money can be taken and invested in the irrigation of Colorado lands.

Mr. SPOONER. If these lands are given to the settlers—and I do not know whether that ought to be done or not—so that the irrigation fund is deprived of that amount of money, money may be taken from the proceeds of the sales of public lands in Colorado and applied to irrigation in South Dakota.

Mr. TELLER. The same thing. But the irrigation bill has not become a law. I am afraid it will not for some time. Anyhow, we ought not to be basing our legislation here upon a bill which has not yet become a law. If I knew that the million dollars to be realized from settlers in South Dakota out of this land would be used in Colorado to build reservoirs, and if by my vote I could give the settlers this land free, I would certainly give it to them. I know we in Colorado do not want anything of that kind. We will not complain if the irrigation fund is depleted to the extent of a million dollars if it is for the purpose of giving free homes to settlers.

What is more, we have one of these land-grant colleges. I guess it is about as good as any in the United States. If the Government shall feel, when the time comes when money can not be derived from the sale of land, that it does not wish to put up the money for the college, I will guarantee that the State of Colorado will take charge of her agricultural college and run it. It will not be abandoned. It will be as good under our administration as it is under that of the Government. It may be, when the revenue from the lands ceases to come in—and it must some day; everybody knows that; we must reach that point ultimately, and it is not a great while ahead either, because there will be very little land that you can ever sell for more than the cost of irrigation—when the time comes when there is no money coming in from the sale of lands and the Government is met with the question whether it will maintain these agricultural colleges, and it says “no, it can not afford it,” there is not a State in the Union which is going to abandon its agricultural college. There is not a State in the Union which is not prepared to take up itself and carry on its agricultural college. There may be one or two among the new States which would be somewhat embarrassed by it, but they would do it all the

same. The colleges would not be abandoned. I do not think there need be any worry about that.

The simple question is whether it is a proper and just thing to put this burden upon the settlement of that particular part of the country and upon those settlers. I do not think you could put the million dollars to any use on the face of the earth which would justify this great rich nation of ours in taking it out of the pockets of the poor settlers.

Mr. STEWART. Mr. President, I am in favor of the free-home law, and I have been in favor of the law, but what staggers me is the high price we are compelled to pay the Indians. There is no way of reducing it. There have been one or two bills passed where the price was reasonable. With respect to Montana the evidence shows that the land was good. Most of it will be commuted, so the Government will lose very little. The land is good and there will be no great loss. In North Dakota the Senators from that State had good land and they consented to take it and pay for it.

In this case I have all the while been laboring under the doubt whether the land—after they have selected out a hundred thousand acres, the best of it, along the stream, knowing the land as I do, which is in the semiarid region and is high land—is worth \$2.50 an acre. It certainly is a fancy price to pay for it. If it is worth that it has been made so entirely by settlements. Originally it was worth very little for any purpose, and if it is worth \$2.50 an acre it is because settlements have crowded in.

I do not think the Government should be forced up in price by the Indians in this way. That is true not only in this case, but in other cases. If there is no way to acquire these lands for reasonable sums, if we are bound to buy them at the Indian prices and then open them to settlement, it is going to burden the Government beyond

all reason, and either we must let up at one end or the other.

If we have to pay fancy prices for the lands, more than they are worth, because the Indians say so, then we can not give the lands away. If we can buy them for what they are reasonably worth, all the conditions considered, and benefit the Indians by taking them, we ought to do so. The Indians are not benefited by having a large reservation. It is better for the Indians if you can keep them in close quarters where you can see them and attend to them. If they are permitted to roam over a vast country they will remain wild. These vast regions do them no good. We are educating their children. We are doing everything we can for them. We are supplying them with rations almost everywhere. We are treating them as wards. If we have to have these vast regions tied up until we pay the prices the Indians ask (and in many cases the Indians are not on the land at all, but are living around towns, off the reservation, and the reservations do them no good unless they cultivate them), we will have to stop the whole thing, because the country ought not to be burdened to pay these prices and then give the lands away.

I suggest that as reasonable men we ought to treat our wards as a guardian would be bound to do, for their own good. We educate them and feed them, and we ought to put them where they can learn agriculture. They can not learn it in a vast region. Put them on good land—we are doing it as fast as we can—and give them allotments. When there is a piece of land which the Indians do not want, which is of no use to them, then the Government should appoint a commission, which should state what the land is worth and what ought to be given the Indians for it. We have the power. That ought to be done. If we do that, we can go on and open the country. If we do not

do it, if we have to send out inspectors who must make contracts, who must get treaties, who go out and have to do what the Indians say in order to get the treaties, the same result will ensue. We have several inspectors who are good men, who would like to make reasonable bargains, but they can not make any bargain unless they do what the Indians want. Their success has all been obtained by submitting to conditions. It is not only this case, but there are others.

In this case I shall, as it came from the committee, vote to sustain the committee. I shall vote against the amendment and vote with the Senators from South Dakota; but I tell them that from this time on I shall fight every other treaty made with the Indians where the Indians fix the price of the land. You can not open the lands on that condition, and that the country may as well understand. You have to change the policy, or I am in favor of making no treaties, opening no more reservations, unless we can get them at reasonable prices.

Mr. JONES of Arkansas obtained the floor.

Mr. DIETRICH. Mr. President—

Mr. JONES of Arkansas. I yield to the Senator from Nebraska.

Mr. DIETRICH. I should like to ask the Senator from Connecticut if he believes that the money which we would derive from the sale of the lands we acquire from the Indians would be considered money to be used in irrigation?

Mr. PLATT of Connecticut. Certainly. That is the express provision of the irrigation bill. All moneys derived from sales of public lands in South Dakota and other States are to be thus applied.

Mr. DIETRICH. Those lands are not public lands at the present time. They are lands belonging to the Indians.

Mr. PLATT of Connecticut. They will be public lands when they are sold.

Mr. JONES of Arkansas. Mr. President. I was very glad to hear the chairman of the Committee on Indian Affairs make the statement he did a moment ago. I very earnestly believe in the homestead system. I do not believe any law was ever passed by Congress which was wiser or more beneficent than the homestead law. I believe the public domain ought to be devoted to making homesteads in the country, and I do not care whether the land comes from an Indian reservation or from anywhere else. Whenever any land comes into the public domain it ought to be opened to settlement and used for that purpose, whenever it is possible to make homes of it.

I believe there ought not to be any exception in this case to that rule, and I heartily indorse the proposed amendment of the Senator from Colorado [Mr. TELLER] and hope it will be adopted by the Senate. If this agreement is ratified and these lands become a part of the public domain, then they should be used for homestead purposes. But I have been somewhat struck with the fact that this debate has run along altogether on that question. It seems to me there ought to be no difference here. It seems to me everybody ought to be in favor of the settlers having the right to locate their homes on the public domain, no matter where it comes from.

The trouble about this business is the paying of these unreasonable and outrageous prices for the Indian claims on lands that they do not own. Now, we have gone forward with that to a most unreasonable extent. We have been buying lands from the Indians at fancy prices. Of course everybody knows how the Indians are. When they understand that the Government wants to buy what claim they have they will put a fancy price on it and ask just as much as they think they can make the Government pay. As was suggested by the Senator from Nevada one of these agents is sent out by the Government, and

he is bound to make some sort of an arrangement, and to do that he must accede to the Indians' demands.

The Indians have a mere right of possession. In a great many cases they do not own the land. They are simply put there for the purpose of occupying it, and the large boundaries which were made in establishing these reservations in the first place were, as a rule, to give them hunting grounds and to keep other people from going in close where the Indians were. That has been changed.

Some years ago we bought the Great Sioux Reservation and agreed to pay 50 cents per acre for the lowest price land. There are thousands upon thousands, if not millions, of acres of that land which have not been used for any purpose. I understand. Nobody goes on it. Nobody can make homes on it. It is not fit for homes, and yet we have paid to the Indians a price at which no American citizen could have sold that land if he owned it.

I believe the time has come when Congress ought to put a stop to that sort of thing; that these extravagant and unreasonable arrangements for buying Indian lands at a fancy price ought to be stopped. We ought to pay a reasonable price for extinguishing their right of occupancy in the land they do not use and never would use, and it ought to be paid with some degree of discretion and common sense.

I do not know whether or not the treaty ought to be ratified as to the purchase of this land. I confess most of the arrangements which have been made for some years past have been contrary to my own judgment. We have been paying unreasonable prices for the lands. I do not know much about this land. I thought it was a very much larger body of land than it is. I misread the bill. I thought it was 4,000,000 acres, and it was I who told the Senator from Colorado there were 4,000,000 acres. I thought 25 cents an acre, perhaps, was not an unreasonable price to

pay to extinguish some imaginary Indian title to a lot of this land which they have never seen and which they can not use and a good deal of which they never could use. Much of this land is utterly unfit for use. Some of it is doubtless good, and if private citizens owned it they could sell it for more, perhaps, than the Government will pay the Indians for it.

In the first place, I do not believe the Indians own the land, and I do not believe we should pay them as if they paid taxes and owned the property as other people own property. The Indians can afford to keep it for all time, if we allow it to be done, and thus prevent anybody from having access to it or deriving any benefit from it, as it carries no burden to the Indians, and they can insist that the Government shall pay them a fancy price whenever it wishes to extinguish their title.

That does not affect the fact with which I started out—that I believe any land which becomes a part of the public domain ought to be opened to the use of any American citizen who has not availed himself of his homestead rights to go and locate a home on it; and I hope there never will be any limitation of that kind put on any bill passed by Congress. If there is anything wrong about this—if too much money is to be paid for the land—let us cut down the amount and bring it down to a reasonable price, but do not undertake to disturb the homestead right, which I believe ought to be kept sacred as long as the Government exists.

Mr. TILLMAN. Mr. President, in that view of it, I think we had better recommit the bill and let the negotiations as to the value be renewed or resumed. There is a million dollars involved; there is a division of opinion and feeling here, the chairman of the committee advocating one policy and the Senators from South Dakota advocating another; and if we are not bound by

some obligations in morals and equity and justice to the Indians why pay them anything? Where do the Indians get any title or any show of title? Why do we make treaties with them? We certainly pledged to these people the honor of this Government some time in the past that if they would go within certain limits and behave themselves they would be let alone and the land should be theirs. We now say, "We are going to ignore that pledge, because we want your land. You are no good anyway. Die; and if you do not die we will kill you." That is the sum and substance of this argument.

I recollect here that a year ago we went over into the Pacific and bought from Spain, at \$2.50 an acre, some land there which we have given over to the Moros or to the parrots and the monkeys. I do not see why we should be fretting about land in South Dakota at \$2.50 an acre, when we are buying land in the Torrid Zone, 10,000 miles off, and paying \$2.50 an acre to Spain for it. In fact, I am very badly muddled about this whole business.

Mr. JONES of Arkansas. I do not think the statement made by the Senator from South Carolina should go unchallenged. The Government has made title to the Indian tribes, and when it has it has observed it. Patents have been issued to the tribes. We are undertaking right now to allot land in the Indian Territory among the Choctaws, Chickasaws, Seminoles, Creeks, and Cherokees. The land was given to these people, and the Government has insisted that every square inch of that land shall be given to those Indians. It is not sold to anybody else or opened to settlement or disposed of in any way, but is divided amongst those people equally and amongst themselves.

Mr. TILLMAN. What is the difference between the treaties we have made with the Chickasaws and the Choctaws and with the Indians on the Rosebud Reservation?

Mr. STEWART. It is very different.

Mr. TILLMAN. Just explain it.

Mr. STEWART. I will. The Choctaws and the Chickasaws were in different States, in Mississippi and down through that country, and it was desired to have them moved. They were under no obligations to move. They gave up what possessions they had there, and this land in the Indian Territory was given to them in a trade, a bargain.

Mr. JONES of Arkansas. By treaty we gave them the land.

Mr. STEWART. A solemn treaty.

Mr. JONES of Arkansas. We issued patents, and they own the land.

Mr. TILLMAN. A solemn treaty? Did not we make a solemn treaty with these Indians, or did we make an unsolemn treaty with the Indians on the Rosebud Reservation? What sort of a treaty was it?

Mr. GAMBLE. I will reply very briefly to the Senator. I meant to allude to that in my remarks yesterday. A treaty was made in 1868—I do not know that it is necessary to go back of that—whereby the Great Sioux Indians were confined to the western part of South Dakota; that is, the region west of the Missouri River. In that treaty it was provided:

And in addition thereto all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named.

It granted to them under the treaty of 1868 absolute and undisturbed use and occupation.

Mr. TILLMAN. Is not that a title?

Mr. GAMBLE. I will follow that by a further suggestion. Then it comes to the treaty of 1889. That was

practically an act of Congress, when it was proposed by the Government to segregate the Great Sioux Nation, consisting, I presume, of 18,000 Indians, into different tribes, locating, I think, seven of them in different reservations in the State.

They were described by metes and bounds, the Rosebud Reservation in one place, the Standing Rock in another, the Cheyenne River in another, the Lower Brulé in another location, and the Crow Creek in another. Though the limits of the separate reservations were defined and there was a cession by them of about eight millions and a half of acres that were thrown open to public settlement, it is stated in the act of 1889, speaking of their separate reservations—

the lands described in each of the other separate reservations so created, and shall be held to confirm in the Indians entitled to receive rations at each of said separate reservations, respectively, to their separate and exclusive use and benefit, all the title and interest of every name and nature secured therein to the different bands of the Sioux Nation by said treaty of April 29, 1808.

It is further provided in this act of Congress that the surplus lands in each of these separate reservations may be treated for in regard to their cession when, in the judgment of the President of the United States, the surplus lands are unnecessary for the Indians. Last year a provision was placed upon the Indian appropriation bill authorizing the Secretary of the Interior at any time to negotiate with the separate Indian tribes for the cession of their surplus lands, and under that provision of law this negotiation was taken up. So this negotiation is not only in compliance with the law of last year, but it is in compliance with the law of 1889, wherein it is provided—

That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interest of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress: *Provided, however,* That all lands adapted to agriculture, with or without irrigation.

I do not know that I need read the further provision. So, then, this was an act of Congress which became operative only when it was ratified by the Great Sioux Nation. They did ratify it under the provisions of the treaty of 1868 by three-fourths of the male members of the tribe. The proclamation was issued, I think, on February 10, 1900, proclaiming the ratification, and then this act became operative.

So it does not seem to me, Mr. President, that we can apply here the general provisions as to treatment with other Indian tribes, but we must be bound by this law and this treaty. These Indians have rights of property in these lands, not the fee title, to be sure, but certainly Congress can not by main force and power take possession of the lands and dispossess the Indians, except under the form prescribed in this treaty and law.

Mr. McCUMBER. May I ask the Senator a question and see if we can not follow that a step further?

What practical difference is there between a right to use and occupation perpetually and a fee title, so far as

the Government is concerned? When we, by a solemn obligation of Congress, in an enactment or a treaty which has been ratified, absolutely grant to these people the right to the exclusive use and occupation of territory without any limit whatever, have they not a title that is just as good as though they had a fee title as long as we have obligated the Government itself to give them that title and to protect them in it? That being the case, are we not absolutely at the mercy of every one of these Indian tribes that have reservations created by treaty to give them such a price as they may demand, or else break our own contract? Is not that true?

Mr. GAMBLE. I think that is true. It must be at a price mutually agreed upon between the parties under the stipulation of the law and the treaty. However, in further answer to the Senator from North Dakota, Congress having granted to these Indians the sole use and occupation of this territory perpetually, it is practically as good as a fee title unless the Indian title became extinguished, and then it would revert to the Government of the United States.

Mr. STEWART. Mr. President—

The PRESIDING OFFICER. Does the Senator from South Dakota yield to the Senator from Nevada?

Mr. GAMBLE. I yield cheerfully to the Senator from Nevada.

Mr. STEWART. The use and occupation is only while they are in a tribal relation. We are proceeding to relieve them of that relation as fast as possible. In the Indian Territory we are breaking it up and giving them their land in severalty.

Mr. McCUMBER. May I interrupt the Senator right there? When we have once given them a tract of land as a tribe and guaranteed them the right to the occupation of that land as a tribe we have placed ourselves in a position

so that we can not break up their tribal relations unless we do it by a contract with them. They can still hold the land under their contract.

Mr. STEWART. In the first place, it lasts only during their tribal relation. I am sorry that we have so many contracts in favor of barbarism and cruelty. I believe that while they are our wards we must take care of them whether the relation is tribal or not, but we are not bound to pay more than the land is worth. We need not buy it unless we have a mind to do it.

Mr. McCUMBER. Yes; we need not buy it unless we have a mind to do it, but we are placed in this position. The States need to have the land opened to settlement. There are vast tracts that you forced upon those States years ago when you created these reservations before they had any representation in Congress. Now, we wish to have them opened up. You have placed us, however, at the mercy of these Indian tribes.

Mr. STEWART. I deny that.

Mr. McCUMBER. And we must make some kind of an arrangement.

Mr. STEWART. I deny that. If this land is necessary for settlement, the Government has a right to take it and condemn it for public use.

Mr. McCUMBER. If I may answer the Senator again, I deny the proposition that where the Government has said to a tribe of Indians, "In consideration of your releasing this territory I grant you certain other territory to hold perpetually," we have a right to place a limitation upon that law and take the land without an arrangement with the Indians.

Mr. STEWART. I deny that the title of the Indians is any higher than your title to your farm, and that can be condemned for public use.

Mr. CLARK of Wyoming. But can it be taken for the purpose of selling it to another?

Mr. McCUMBER. It may be condemned for public use, but when it is opened to settlement it is for private use and not public use. No court will ever hold that it is taken for public use under such circumstances.

Mr. STEWART. Opening the land to settlement is a public use. There is no doubt about it. If that is not a public use I should like to know what is. We must have settlement on the land, and I believe it is a public use. I do not believe that we are in the power of those Indians. If we are in their power and have to pay more than the land is worth I do not want to have any more treaties or enactments made.

Mr. SPOONER. Does the Senator say—

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Wisconsin?

Mr. STEWART. Certainly.

Mr. SPOONER. Does the Senator mean that if the Government wants to take 500,000 acres of land for free homes, in order to throw it open to settlement, the Government can condemn it?

Mr. STEWART. That is a different proposition.

Mr. TILLMAN. You are not an Indian.

Mr. STEWART. I am not an Indian. I am not a sham. I am a reality. This is a sham Indian that you are dealing with when you deal with an Indian tribe. If public policy requires land to be taken, whether it is 500,000 acres or any other quantity.

Mr. SPOONER. Would it be any more a public use to take it from the Senator from Nevada than to take it from an Indian tribe?

Mr. STEWART. Public policy might require it to be taken from a dedication to barbarism, where it is used for the purpose of pauperizing and barbarizing and destroying civilization, whereas it would not require it to be taken where it was used for purposes for civilization.

Public policy is in favor of civilization. These large reservations are opposed to civilization. Where they have existed there never has been any progress in civilization. We have the spectacle in the United States of the Indians dwindling away and diminishing in number, on account of disease and laziness and misery, where they are fed. How is it with the Indians elsewhere? See the public policy in Mexico. There is a population of 10,000,000, and nine million and a half are Indians. Was it good policy to take the land from them and allow them to become civilized? Up in British Columbia every Indian is at work. Is not that good public policy? If you leave the land to be held by savages you monopolize the land in favor of barbarism, which is contrary to public policy. We are not wholly in the power of these Indians or their friends, the speculators out there.

Mr. McCUMBER. Will the Senator allow me to ask him a question?

Mr. STEWART. Certainly.

Mr. McCUMBER. I make a clear distinction between this case and obtaining the original title of the Indians to lands by mere occupancy. They are merely our wards. We may take that land so far as any title by reason of original occupancy is concerned. But we have recognized them as people capable of making a contract and have entered into a contract with them. Thereby we have estopped ourselves from denying their power. When we give them a certain tract of land for occupation simply in consideration of something else we are then in an entirely different position with the Indians, and we must treat them the same as we would treat white men.

Mr. STEWART. Do you think it is good policy to dedicate to barbarism enough land for four or five States?

Mr. McCUMBER. No, I do not; but we have done it already.

Mr. STEWART. No, you have not done it. You have not reclaimed them by the public policy you have pursued. I do not believe that we are in their power, and I shall vote against buying the land. I protested against that in the committee, but the committee reported it here, and I am at liberty to oppose it unless committed to it in committee. I do not think the agreement ought to be ratified, because it proposes to pay more than the land is worth.

Mr. COCKRELL. I wish to ask the Senator in charge of the bill whether a fee title can not pass from the United States to an Indian nation or tribe without the issue of a patent?

Mr. McCUMBER. There is no question about it.

Mr. GAMBLE. I do not know that I understand the question.

Mr. COCKRELL. Can not a title of the United States pass from the United States to a party by a law or by a treaty which is ratified, without the issue of any patent?

Mr. GAMBLE. Yes; I should say so.

Mr. PLATT of Connecticut. If the United States made a treaty with Indians to give them a fee-simple title to some lands which the United States owned, there is no question but that title would pass without the formal document of a patent.

Mr. SPOONER. I should like to ask the Senator from Connecticut a question.

MR. PLATT of Connecticut. Perhaps I have gotten myself into more trouble than I thought I had. [Laughter.]

Mr. SPOONER. Of course, what the Senator says about an act passing fee is correct. But has the Senator any doubt that an act of Congress vesting a perpetual possessory title is not just as efficacious, as far as it goes?

Mr. PLATT of Connecticut. To convey that kind of a title?

Mr. SPOONER. Yes.

Mr. PLATT of Connecticut. Certainly.

Mr. SPOONER. Now, the argument of the Senator from Nevada—

Mr. RAWLINS. Will the Senator permit a query there?

Mr. SPOONER. Now I have gotten myself into trouble.
[Laughter.]

Mr. RAWLINS. If we pass any sort of a title except temporarily, continuing as long as a status or a tribal condition exists is it not necessary to have a definite and ascertainable grantee. I put the question to the Senator from Wisconsin, How would the Government convey a title in fee simple to a tribe of Indians, the tribe being the grantee?

Mr. PLATT of Connecticut. A tribe will take

The PRESIDENT pro tempore. The Chair lays before the Senate the unfinished business.

Mr. GAMBLE subsequently said: I ask unanimous consent that the bill in regard to the ratification of the agreement with the Indians of the Rosebud Reservation be taken up to-morrow morning immediately after the conclusion of the morning business.

The PRESIDENT pro tempore. The Senator from South Dakota asks unanimous consent that to-morrow morning, after the completion of the routine business, the bill which has just been laid aside may be considered. Is there objection?

Mr. COCKRELL. I hope the Senator will not make that request until the Senator from Connecticut [Mr. PLATT] is in his seat. It can be done any time as well as now.

Mr. GAMBLE. I will state in reply to the Senator from Missouri that I spoke to the Senator from Connecticut just before he left the Chamber, and he suggested that I make the request.

Mr. COCKRELL. All right.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

[35 Cong. Rec. 4963-4971 (1902)]

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION.

The PRESIDENT pro tempore. The Chair lays before the Senate Bill 2992.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect.

The PRESIDENT pro tempore. The pending amendment is that offered by the Senator from Connecticut [Mr. PLATT]. Is the Senate ready for the question?

Mr. CULLOM. I hope the amendment will not be disposed of until the Senator from Connecticut comes in.

The PRESIDENT pro tempore. There is an amendment on the table offered by the Senator from Colorado [Mr. Teller].

Mr. TELLER. That is an independent amendment, and it may be voted on.

The PRESIDENT pro tempore. If there be no objection, the amendment offered by the Senator from Connecticut will be laid aside for the present, and the Chair will lay before the Senate the amendment offered by the Senator from Colorado. It will be read.

The SECRETARY. It is proposed to amend the amendment of Mr. PLATT of Connecticut by striking out all of line 25—

Mr. TELLER. That is not correct. I do not propose to amend the amendment of the Senator from Connecticut. I offer it as an independent amendment. It strikes out two words that his amendment proposes to strike out, but that does not make it any less an independent amendment. I have not the bill before me.

The PRESIDENT pro tempore. As the Senator sent it to the desk it is to amend the amendment of the Senator from Connecticut by striking out all of line 25, page 6—

Mr. TELLER. No, Mr. President, I did not send it to the desk; I just made a verbal statement. The clerks misunderstood it; that is all. The Senator from Connecticut is here now, and we may as well vote on his amendment first.

The PRESIDENT pro tempore. The Senator from Colorado moves to strike out two words that the Senator from Connecticut moves to strike out.

Mr. PLATT of Connecticut. What is the present condition?

The PRESIDENT pro tempore. The Senator from Connecticut is now here.

Mr. TELLER. I will withdraw my amendment for the time being, since it has gotten into that shape, and let the vote be taken first on the amendment of the Senator from Connecticut.

Mr. PLATT of Connecticut. Mr. President, I think the Senator from Missouri [Mr. COCKRELL] desires to be heard on my amendment; but as he is absent, I will, until he comes in, make some observations about the arguments which have been used against it and in favor of the passage of the bill as originally reported.

First, it is said that every case ought to stand on its own merits and the Government ought to have no policy about the matter whatever, by which I suppose it is intended that where a bargain has been made with the

Indians in which they have been paid less than the actual value of the lands to the settlers, we might require the settlers to make payment for the lands, because in those cases they are going to derive an advantage, but that where we have not paid any more than the lands are worth we ought to give them away. Now, that seems to be a very peculiar argument.

I know other Senators have claimed that no matter what we pay for the lands, we ought to give them away; but the Senator from Minnesota [Mr. CLAPP], the Senator from South Dakota [Mr. McCUMBER], and the Senator from Montana [Mr. CLARK] insist that every case ought to stand upon its own bottom and upon its own merits, and that except in cases where the settlers are going to derive some unusual advantage we ought not to charge them anything.

It seems to me that the Government must have a settled policy about this matter. It is perfectly apparent to Senators that if we make an exception in any case—, if we conclude that on the whole a very moderate price has been paid to the Indians and therefore we will give the lands away to the settlers—that will be the policy of the Government and of Congress. If we pass this bill giving these lands to settlers, there will be no more bills passed in which we charge the settlers for the lands upon which they settle. It does not require very acute perception to see that there will be the result. Neither does it require very acute perception to see that it is a most ingenious argument in favor of the passage of the bill.

We have agreed to pay the Indians \$2.50 an acre for these lands. Now, if we allow the settlers to take the lands for nothing, because that is a fair price, and that is the argument which has been made here, we shall not only follow that precedent in all bills hereafter for the opening to settlement of Indian reservations, but in the

cases where we have already required that the settlers shall make a payment which will reimburse the Government we shall release them from their obligation.

So the Senate might just as well understand that this is not a case which can be excepted out of a general policy. I think it safe to say that if this bill passes, giving to the settlers lands for which the Government pays \$2.50 an acre, every other bill for the opening of Indian reservations will give away the lands to the settlers, and in all those instances in which, by bills already passed, they have been required to make payment they will be released from their obligations.

With regard to these particular lands, if the Senate will indulge me for a moment, the Senator from Nevada [Mr. STEWART] says he thinks we paid a large price for them, and therefore he does not think we ought to give them away to settlers, having paid a large or perhaps an extravagant price for them, but if we have only paid what they were worth, then he thinks we ought to give them away to the settlers. I confess I can not see the force of that argument. But with reference to these particular lands, we have not overpaid for them upon the basis of what they are worth to the settlers. I think we have overpaid for them upon any basis upon which the Indian title ought to be estimated and appraised.

Of course, I do not know the value of these lands from personal observation, and few senators do. I know that they are greatly desired by settlers. I can only form an estimate as to whether the lands are worth what the Government has agreed to pay for them by the report the inspector who negotiated the agreement makes. He says he thinks it is a fair price, but he says also:

That he was greatly handicapped in the beginning by the fact that most of the Indians who favored a cession at all held the lands as an enormous

price—from \$7 to \$15 per acre; that only a very few expressed their willingness to accept as low as \$4 per acre, and this in case and all in one payment.

In trying to make these negotiations, I think the Indians estimated their lands by what they knew of the value of the surrounding lands. The inspector says:

That upon his arrival all the white men connected with the agency, as well as those of the surrounding country with whom he talked, held the lands in question as worth \$5 per acre.

Now, Mr. President, why should a white man connected with the agency and those in the surrounding country hold the lands as high as \$5 an acre if they are not worth that to settlers. We must all bear in mind the distinction between what we are to pay the Indians for an occupancy title and what the settlers think they are worth if they can get them.

It appeared that adjacent lands in Gregory County and in Hoyt County, Nebr., were selling for \$5 to \$10 per acre; that a syndicate of cattlemen in Sioux City, Iowa, expressed its willingness to pay \$4 per acre for the entire tract.

Does not that do away with the claim which is made here that these lands are not worth to the settlers what the Government has agreed to pay the Indians for them? I apprehend that the settlers who are going on these lands, if they are required to pay the Government \$2.50 an acre, will think they are lucky in getting lands that are worth \$5 an acre and perhaps more than that.

It is said that a portion of these lands are grazing lands and not particularly valuable for agricultural cultivation. I presume that that is partially true. I presume it is also true that the Indians may have selected for their allotments the best lands. But I believe it still remains

true that there are many agricultural lands which will be located upon by settlers. They are not going on the grazing lands to take 160 acres of grazing land. What they are after is the agricultural lands in this reservation. I think it will turn out to be true that if the Government charges them \$2.50 an acre, they, so far as they settle up this tract, will think they have got lands worth \$5 an acre; and that is what is at the bottom of all this pressure upon Congress. Mr. STEWART. Will the Senator from Connecticut allow me to call the conference report on the Indian appropriation bill?

Mr. PLATT of Connecticut. I will yield to the Senator.

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 2992) to ratify an agreement with the Sioux Tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect.

Mr. PLATT of Connecticut. I do not care to make further observations at this time. Other senators wish to speak.

Mr. CLARK of Wyoming. Mr. President, I do not want to have this bill go to a vote without expressing in just a word or two my views in regard to the matters contained in the amendment offered by the Senator from Connecticut.

I am extremely sorry to differ from him on this matter, as I always am on any subject; but I believe that his amendment does not represent what has been the settled policy of this Government in dealing with the homes seekers of the Government. My belief is that the

policy of the Government for forty years has not been to sell its lands to anybody. My understanding of the land laws of the United States is that they have been conceived in that wisdom which gives every man who is willing to make a home upon the public domain and anchor himself to a permanent citizenship upon the public domain his home without money and without price. That is exactly what the bill proposes to do.

One of the reasons why I have given my allegiance to the Republican party, and I think one of the greatest acts ever placed upon the statute books by that or any other party, has been the homestead law, passed in 1862, under which the great Northwest has been settled up. I do not want to see any turning aside from that policy. I do not want to see any policy pursued that will result in eventually taking away the free homes upon the public domain and selling to whoever may have the money to purchase the remaining land.

It is urged that the public lands should be disposed to which reference to the man who will go and settle and make his home upon them and that they should not be used for the benefit of the speculator. That is exactly what the treaty is proposed and presented to us does. It is exactly what the amendment of the Senator from Connecticut will not do.

The Amendment proposed by the Senator from Colorado [Mr. TELLER], providing for an actual residence of five years upon the land, meets with my approval. The speculator is not going to live five years upon 160 acres of wild land for the purpose of getting a title to it. The speculator may perhaps have money enough to pay the \$2.50 an acre for it. I believe it is true that not one in a hundred of the men who are seeking homes upon the public domain, either in this Rosebud Agency land or elsewhere, has enough money to pay

\$2.50 an acre for the land. Time and time again have the homeseekers in the West and in the Northwest been compelled to mortgage everything they had to raise the \$14 and \$15 or \$16 necessary to pay the land-office fees for their homesteads.

Mr. PLATT of Connecticut. Can they mortgage it before they get a title to it?

Mr. CLARK of Wyoming. About all they have to mortgage is a canvas-covered wagon, a few chairs and bedding, and a milch cow, and \$14 is about all they can get on it. Time and time again, to my knowledge, they have done that in order to pay the land-office fees. I say we ought not to put any impediment in the way of these settlers.

Now, there is another misapprehension, and that is that bills of this sort for free homes are passed for the benefit of the people who live in that country. That is not true. The men who live in that country in some way or other, by scrubbing and scraping and economy and luck, and in spite of hard luck, having been there for some time, have become fastened. These homes are for the men we want to come in there with their families to settle up and develop the country. We want the settlers from Connecticut; we want the men from Iowa; we want the men from South Carolina to come there and build homes under the homestead laws. We want the settlers. The cry in the West to-day is more men and fewer steers, notwithstanding the price of beef. It is more men that we want, and we want them to come from all over this nation to build homes with us.

The Government gets back its money tenfold. Every man who puts his foot to stay upon 160 acres of land pays back tenfold to the Government all that it has cost.

The argument is used that these lands will cost the Government \$2.50 an acre in money. That is true. There

is not an acre of land under cultivation in this nation to-day that did not cost this people. The land in Connecticut cost this nation something. The land in Illinois cost this nation something. The land to the west of the Missouri has cost this nation something. It has not always been in \$2.50 pieces; it has not always been in dollar pieces; but it has been in something. It has been in blood. It has been in American Privation. It has been in something, and the Government has got its return a hundred times over.

I am not at all alarmed at the idea that our public domain will soon be all occupied and we shall not have anything more with which to pay for our agricultural colleges. God speed the day, not God speed the day when we shall not have our agricultural colleges properly sustained, but God speed the day when every acre of land all through our West and Northwest shall be taken up and be the homes of honest, toiling settlers, not given up to the birds of the air and beasts of the field, but when every acre and every rood of ground shall maintain its family. That is what the people of the Northwest want. We do not believe that the Government should enter into the policy of selling lands to reimburse itself or for a profit. It is turning back the entire principle of our public-land system.

The land system of the United States is different from the land system of other nations. It is modeled on the idea that the lands are for the good of the people—that they are not to be made a source of revenue to the Government. When the time comes, if it ever shall come, and I hope it is in the near future, that we have no public lands to dispose of to the settlers or anybody else, then we will see coming from the very States that you are populating under a free-homes proposition a wealth that will take care of all our agricultural colleges. As was said

by the Senator from Colorado [Mr. TELLER] yesterday, the States are ready to take it up whenever the General Government has to let go.

Now, Mr. President, much of the discussion of this bill has appeared to me to be irrelevant. I do not think the question of title cuts any figure at all. The only difference is between a perpetual occupancy and a title in fee. That is just the difference between the Pottawatomies and Wyandottes, as illustrated here upon the conference report a minute ago. The Pottawatomies have their title in fee simple, and they can sell it. The Wyandottes, exactly in the same position, have their title by occupancy, and they can not sell it. That is all. The Rosebud Indians have not their title in fee, and they can not sell it to whom they choose. Nobody can buy it except by treaty stipulations between the Government of the United States and those Indians. But once purchase it under the treaty stipulation, it is just as good as any fee-simple title that ever existed on the face of the earth, and the purchaser is just as much protected in his title. It carries everything that a fee-simple title possibly could carry.

Mr. President, I hope that the amendment of the Senator from Connecticut will not carry. He says this bill will be reversal of our land laws. My judgment is that if his amendment carries it will be a reversal, because it cuts under the free homes. It makes the sale of lands for a profit a settled policy of this nation; and I hope the time is far, far distant before we settle upon that policy.

Mr. McCUMBER. Mr. President, this amendment brings up the entire question that the Committee on Indian Affairs has been considering, the question of opening up Indian reservations and whether the Indians will sell their titles for reasonable compensation or not. That is directly in point in this question. It affects

directly the great policy of change in the matter of Indian reservations which is coming before Congress and must be acted upon in a very short time.

Mr. President, the very first thing that we must consider in a matter of this kind is the question of title that we have to deal with, the Indian title, the character of that title, and the rights of the Government to-day, after having made the many treaties that we have made in the past, having now been brought face to face with the rights of the Indians and the rights of the United States in reference to their land. There has been a great deal of refined reasoning on the part of some of those Senators who claim that we have a right to go into these reservations and open them up and pay the Indians what we think the lands are reasonably worth. We are considering that character of title, and I am justified, therefore, in making a few remarks concerning Indian titles in general in order to place ourselves in a position to meet the pending question.

What is the Indian title in the first instance? What is the title of ancient occupancy? What is its force? What is its character? What rights have we in lands occupied exclusively by the Indians where they have not been yet ceded by any act of Indian tribes? That is certainly a very inchoate right. It is a title that has not much value to it. I admit, as it has been stated here before, that we have a right, perhaps legally, though not morally, to compel the red men to pass beyond the limits of increasing civilization and cultivation of the soil; but when we have driven them to the last extremity, when we have made reservations for them, then we reach a different point in our argument.

Mr. President, in the matter of ancient occupancy the title is so light that we may have the right of possession and exclude the Indians from the possessory title of that

land. When, however, we have made a binding obligation with those Indians, in consideration of which they have surrendered that occupancy, which the United States courts have decided time and time again has a sufficient value to make it a legal consideration for cession; when we have received that and in consideration have given them a possessory title of other tracts of country, then we have bound the Government; and when we are in such a position, why not deal with those Indians as we deal with any civilized race? We have got to respect our contracts. We have got to buy those lands back for such price as we can agree upon, and we have no legal authority to open up a single reservation until we have done so.

Now, Mr. President, we have given those people a possessory title. My friend from Nevada [Mr. STEWART] said that we still have some kind of a right there; that theirs being a possessory title there is some way in which we may exclude them and by which, under a law similar to an eminent-domain law, we can compel them, for their own benefit and for the benefit of the United States, to yield up their lands for a fair consideration. I do not think that the Senator from Nevada has considered that very well as a legal proposition. When we open up these lands for public settlement we open them up for private use and not for a public purpose, and as we open them up for a private use we can not enforce the law of eminent domain.

Mr. RAWLINS. Mr. President—

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Utah?

Mr. McCUMBER. With pleasure.

Mr. RAWLINS. As I understand the proposition of the Senator, it is that we have no constitutional power to appropriate the lands in Indian reservations in the

exercise of the power of eminent domain, because it is not proposed to devote the lands to a public use. Is that right?

Mr. McCUMBER. That is my proposition, if we do not devote the land to a public use after having made a contract and agreement with the Indians, granting them the exclusive use and occupation of the premises.

Mr. RAWLINS. Mr. President, we have pending now in the Senate a bill known as a bill to provide a temporary government for the Philippine Islands, in which that very proposition is involved—namely, the condemnation of lands now held by a corporation, or a religious order, known as the friars, to become a part of the public domain and to be disposed of for private use. I suppose on that matter I shall have the support of the Senator from North Dakota and the Senator from Wisconsin that that is not proper legislation.

Mr. McCUMBER. Mr. President, I have listened with a great deal of pleasure to the expounded knowledge of the Senator from Utah relative to the Constitution of the United States being in effect in the Philippine Islands. There is a time and a place for that discussion. I suppose that the three days' discourse by the learned Senator from Utah has been sufficient to fix his own mind to a certainty as to the effect of our Constitution in the Philippine Islands, and hence I think it would be utterly useless for me to argue that question with him now upon the pending measure.

Mr. RAWLINS. Will the senator permit me further?

The PRESIDENT pro tempore. Does the Senator from North Dakota Yield?

Mr. McCUMBER. Certainly; with pleasure.

Mr. RAWLINS. Mr. President, I did not desire to invite the Senator's attention to the Philippine question upon this measure, but only to the legal proposition involved.

As I now understand the Senator's answer to the question I propounded, it is that we have the Constitution applicable to South Dakota and have no Constitution applicable to the Philippine Islands, and therefore in the Philippine Islands we can take property, in the exercise of the power of eminent domain, and devote it to private use, which we can not do in the United States.

Mr. McCUMBER. Mr. President, I have stated nothing of the kind. I have simply declined to argue that question, which has been discussed so fully for three years, and which requires and entirely separate discussion. We have a Constitution of the United States, and there is a State constitution of the State of South Dakota. We have not the United States Constitution effective in all of its parts in the Philippine Islands. When we received the Philippine Islands we received them in the condition in which they then existed, with the land subject to the laws that were in existence at the time we received them, and we have the power to make laws now relatively to the disposition of those lands. Congress undoubtedly will act justly and fairly in that matter, and I am perfectly satisfied to leave that question with Congress in the final enactment of a bill that will be before us.

But, Mr. President, going back to the question involved in this measure, the right of South Dakota and the right of the United States to those Indian lands, the position that I wish to state and make clear is this, that to a certain extent, by acts of Congress, enacted in the fifties and sixties, we have placed ourselves in a position so that the State is, to a certain extent, subject to the will of the Indians there in reference to whether or not they will sell their lands; that we are in their power to a certain extent, and to an extent that binds the Government. We can not go in and take those lands from them.

I believe, Mr. President, and I believe firmly, that the United States as a Government have no right to place a stumbling-block in the progress of any State in the Union, and if they have done so in the past through inadvertence, the first duty of the Government is to remove that stumbling-block from the progress of the State.

If we take one-third or one-fourth of the State of South Dakota and convert it into an Indian reservation and segregating the good lands there so that you can not get the requisite population in the State of South Dakota without making a contract which will be onerous to the Government, then I claim that it is the duty of the Government to relieve the State of that condition. If by your own act we have in the past placed that obstacle in the progress of the State, it is our duty, even though we are compelled to pay more than a fair and reasonable compensation, to remove it. Whether those lands are worth \$2.50 an acre, or whether they are worth \$10 an acre, they are a part of the public property of the State, and the State has a right to the use of those lands for the benefit of its inhabitants, and it has a right to ask Congress to make an agreement with those Indians, so that the lands may be utilized, and will themselves make a part of the wealth of the great State of South Dakota.

Have we done this, Mr. President, in this particular bill? It has been intimated that we have paid a high price for these lands. On a whole, I believe that we have purchased them for a reasonable price. Two dollars and a half an acre is not an unreasonable price for all of that land taken together, for we must remember that out of the 520,000 acres, about one-fifth of it, 205,000 acres, of the very best of this land, has been turned over to those Indians. That portion which the Indians have taken, that portion along the streams, that portion which has water

facilities, that portion which is the richest for agricultural products, that which is the best for grazing, and which is probably worth two or three times as much as that which is 30 or 40 miles from the streams, the Government itself has taken and given it to those Indians.

If you will take that at five or six or seven dollars an acre and estimate the value of the balance of it, you will find on the whole that the other will only be worth about 60 or 70 cents an acre. So to charge the settlers, the new men who are to go into that country, for the land that the Government has bought from the Indians, after giving them the cream of all the lands in that reservation, is not honest, is not just. It is perfectly right in some instances, Mr. President, that the settlers should be required to pay a fair consideration for the land.

I will compare this with the condition in North Dakota of the Devils Lake Reservation. There were opened up a reservation; we paid \$3.90 an acre for the land, and we are charging the settlers exactly the same price. I made no objection, nor did my colleague, to that bill upon the floor of the Senate. Why? Because we knew that for every quarter section of land there is then there will be 100 persons ready to take. We know also that it is worth from six to eight or ten dollars an acre. So if the Government charges \$3.90 an acre for it the settler can not complain if he gets land that is worth in the neighborhood of six or eight dollars an acre.

The conditions are not the same as those described by the Senator from Idaho. Fifty years ago settlement proceeded two, three, four, or even a thousand miles from where there were railroad facilities, but to-day our railroads go ahead of the settlements. We have no such conditions as existed fifty years ago. We have no such privations on the part of those forerunners of civilization in our own new country.

In our Devils Lake country the reservation is surrounded with nice towns, with good cultivated farms, with all of the luxuries near at hand, so that the man who goes there can get a home and he will get a good one, by paying \$3.90 an acre for the land.

That is not true down on this reservation in South Dakota, I believe that after you have taken out the 105,000 acres for the benefit of the Indians, which you have given to them, the balance of the land is not worth \$2.50 an acre, although the reservations taken as a whole, is probably worth more than that sum.

Mr. President, our desire is to open up these reservations. How are you going to open them up? How are you going to get the benefits that you are expecting to get in the civilizing of the Indians by placing white settlers among them, unless you place the land at such a price that settlers will take it up? Land that is not worth \$2 or \$1.25 an acre probably is not worth settling on. In order to get those settlers you have to go to take the land which you have segregated, the poorest portion, which you have not presented to the Indians there and place it at such a price, at least that white settlers can afford to go in and take it. If it is only pasture land, if it is only grazing land, every Senator knows that land is not worth \$2.50 an acre for grazing purposes alone.

But that is not all, Mr. President, Senators seems to think we are throwing away all this money that we are paying to the Indians—\$2.50 an acre or five or ten dollars an acre—when really it is going into the Indian fund for the support of the Indians. We are supporting them from day to day, and we are taxing ourselves to do so. Therefore what difference does it make whether we buy their land at \$5 an acre, which, we will say, is worth \$2.50 an acre, and give them the benefit of it by paying the same money out to them, or whether we take it out

of the Treasury of the United States and pay it for the benefit of the Indians?

Mr. President, I say, to support my proposition, that we should open up this reservation, no matter what we may have to pay within the line of reason.

Mr. TILLMAN. Mr. President, the Senator is making some statements that do not seem to be in accordance with the provisions of the bill: at least I do not understand it so. The Senator speaks of this money that is to go into the Indian Fund. If he will look at page 5, section 2, of the bill he will see this provision:

That in accordance with the provisions of articles 2 and 3 of said agreement the sums of \$250,000, for the purchase of stock cattle, and \$158,000, as the first of five annual installments to be paid said Indians in cash.

The money is to be paid to the Indians themselves, as I understand it, and you are going to set it apart to be used for their benefit hereafter.

Mr. McCUMBER. Mr. President, I was speaking of the provision relating to the opening of Indian reservations in general in my last remarks, and not specifically upon this bill. However, it makes but very little difference whether you say you place it into a fund and then pay it out, or whether you pay it out in the first instance to the Indians. In either event the Indians gets the benefit of these funds; and if we pay him this way, there is so much less that comes out of the Treasury for his support; and we are bound to support the Indians.

Mr. TILLMAN. Another question, Mr. President, if the Senator will allow me.

Mr. McCUMBER. Certainly.

Mr. TILLMAN. Do I understand this block of 416,000 acres of land is scattered about: that the Indians are all mixed in, through, and around it, and that they have had

the pick and choice of this whole Indian reservation, and the remainder of the land is only what they do not want?

Mr. McCUMBER. That is correct. The map, which was exhibited by the Senator from South Dakota [Mr. GAMBLE], showed the location of the Indian allotments. They followed along the streams and the branches of those streams, of course naturally taking the best land there was in the entire reservation.

Mr. TILLMAN. Then, Mr. President, I notice here on page 6, beginning in line 17, this provision:

That the price of said lands shall be \$2.50 per acre: but settlers under the homestead law, who shall reside upon and cultivate the land entered in good faith for the period required by existing law, shall be entitled to a patent for the lands so entered upon the payment to the local land officers of the usual and customary fee and commissions.

This provides for two methods of disposing of these lands, as I understand it, one by homestead and the other by sale, and whatever you sell is to be sold at \$2.50 an acre. Is that it?

Mr. McCUMBER. That is not right. The Senator must remember that we are now discussing the amendment of the Senator from Connecticut [Mr. PLATT].

Mr. TILLMAN. No: I am discussing the bill. I want to know just how you propose to dispose of these lands. It is proposed that they shall be subject to homestead entry only. That is the amendment, I think, of the Senator from Colorado [Mr. TELLER].

Mr. TELLER. No.

Mr. TILLMAN. The Senator said something about striking out the right to commute. If he does not propose that the homesteaders shall get the land, then he proposes that it shall be obtained by purchase at \$2.50 and acre and sold to any cattle company that chooses to come in

and pay that sum, or else I do not understand what the Senator means.

Mr. TELLER. Will the Senator from North Dakota allow me a moment?

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Colorado.

Mr. McCUMBER. With pleasure.

Mr. TELLER. Here is a provision on page 6 of the bill, beginning in line 16:

And provided further, That the price of said lands shall be \$2.50 per acre—

Then there is the free-homestead provision, from line 18 down to line 25, inclusive, as follows:

but settlers under the homestead law, who shall reside upon and cultivate the land entered in good faith for the period required by existing law, shall be entitled to a patent for the lands so entered upon the payment to the local land officers of the usual and customary fee and commissions, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry.

Then follows a provision for commuting. The Senator from Connecticut proposes to strike out all about free homesteads. My amendment is to strike out all about commuting. If we defeat the amendment of the Senator from Connecticut it will be necessary, to make the language of the bill harmonious with the idea of free ownership, to strike out the words:

That the price of said lands shall be \$2.50 per acre.

Mr. McCUMBER. I understand that means when it is commuted.

Mr. TELLER. Yes; that is what it means; but if we do not allow them to commute at all, then that language

must go out.

Mr. McCUMBER. Then the settlers will get the land free.

Mr. TELLER. Then the settlers will have free homesteads, and there will be no opportunity at all for speculators to get in.

Mr. McCUMBER. I do not understand that any of this land is going to be put on the market at \$2.50 an acre.

Mr. TELLER. No; but the \$2.50 an acre refers to commutations.

Mr. McCUMBER. Certainly.

Mr. TILLMAN. Will the Senator permit me?

Mr. McCUMBER. Certainly.

Mr. TILLMAN. Referring to the top of page 6, I find a provision that the lands—

shall be opened to settlement and entry by proclamation of the President, which proclaims shall prescribe the manner in which these lands may be settled upon.

If it is found that the restrictions on the conditions of settlement will require the usual plan, whatever it is, to get a title, keep the people from going there, and the President then says, "Well, as I can not sell the land to homesteaders I will sell it to the cattle companies or to whoever else wants to use it for grazing purposes," what is going to prevent that being done? This law will not.

Mr. McCUMBER. Is the Senator through?

Mr. TILLMAN. I am considerably muddled, Mr. President, and I will wait until the Senator gets through to see if he throws any additional light upon these dark questions, and I may say something when he finishes.

Mr. McCUMBER. I presume that the land will be opened up by proclamation, the same as any other public domain is opened up for general settlement, and that it may be settled upon under the homestead laws. If a

person desires to commute, as the bill now stands he must pay \$2.50 an acre. If he lives upon the land for five years he may receive it from the Government absolutely free. The amendment of the Senator from Connecticut is to compel, as I understand, the payment of \$2.50 an acre in every instance.

Mr. President, I think what the Senator from South Carolina is driving at is as to the method of determining who may settle upon these lands or who may hold them. I simply judge that from the criticism he made yesterday, I believe, concerning the method in which settlers were allowed to take up lands in Oklahoma and in other places. His criticism, as I remember it, was against drawing lots. I know the Senator from South Carolina is one who jealously and zealously guards the interests of the poor man, and I want to place before him a condition such as we shall have in the Devils Lake Agency at the time it is opened for public settlement. I say there will be a hundred men for every quarter section. What is the present method? The present method is that a man has to be on the border of the reservation, and the moment he gets word that it is open he has his horses hitched to his wagon, he has a load of lumber on that wagon, and he starts on a five, twenty, and a hundred mile race to get to the particular quarter section, and to get there before anyone else does. The man who has the best horses and the most of them, who can put more of them into a single wagon, is certain to get into the reservation in the quickest time, and to get onto that quarter section sooner than the other individual possibly can.

With all these hundreds of individuals, how are you going to determine which one shall have the preference right? I believe that the system of drawing of lots that was adopted in the settlement of some of the country a short while ago proved the most satisfactory of anything

we have ever attempted; and if the Senator from South Carolina can suggest a better one, one that will be more economical, one that will be better and more just to the citizen who is so poor that he can not go into that race with a blooded horse and get onto a quarter section of land. I know the Interior Department will be very glad to hear from the Senator in reference to the matter, because it is a question that must be solved.

Mr. TILLMAN. Mr. President—

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from South Carolina?

Mr. McCUMBER. With great pleasure.

Mr. TILLMAN. The point that presses on me with most force is how to get around the man who is speculating in these lands, and who is trying to get a quarter section by gift.

Mr. McCUMBER. He can not get a quarter section by gift unless he lives on it for five years; and he would not be much of a speculator then.

Mr. TILLMAN. Let me ask the Senator, Is the requirement that a man must live on the land in person strictly enforced? If he goes there, sets up occupancy, digs a well, runs a fence, and once in a while goes to see it, is not that about the way it runs?

Mr. McCUMBER. If the Senator ever got into a contest for public land between two persons claiming it, and went through these departments he would find that the law of residence was very strictly enforced, that actual occupation was required, and that nothing else will take its place.

Mr. TILLMAN. Is that the rule?

Mr. McCUMBER. That is the rule.

Mr. TILLMAN. Is it not a rule that is often relaxed?

Mr. McCUMBER. I have never known of its being relaxed in case of a contest.

Mr. SPOONER. How is it if a man is unable to occupy his homestead by reason of sickness?

Mr. McCUMBER. If, in case of sickness, a person has to go away, that does not relax the law at all.

Mr. TILLMAN. So that under the homestead law actual occupancy and use of the land is necessary before a patent can be obtained?

Mr. McCUMBER. Certainly; and the settler has not only got to show that he has actually occupied the land, if a married man, with his family for five continuous years, but he has also to show the character of his improvements and the amount and value of them, so that the Department may see that he has acted in absolute good faith and that he was not acting for the purposes of speculation; and he must show that not only by his own testimony, but by the testimony of two other witnesses.

Mr. TILLMAN. Now, as I understand, the struggle of the hundred for one quarter section, who, the Senator says, will be on the border when the Devils Lake Reservation is opened, will resolve itself into the swiftness with which any given man can get to a given quarter section, set up his pegs, and do something which will give him a right to claim the land.

Mr. McCUMBER. Yes; unless some arrangement is made by the Interior Department similar to the arrangement that was made in opening up some of the reservations in Oklahoma Territory.

Mr. TILLMAN. And in that case we have another lottery. It is the lottery I am opposed to. How are you going to find out whether a claimant of any given quarter section is a bona fide settler or not; whether he is merely a speculator, and is only doing enough to get title to the land, and then sell it at a profit?

Mr. McCUMBER. The Senator evidently does not thoroughly understand the method of settling upon Government land.

Mr. TILLMAN. I do not, and I am trying to get some light.

Mr. McCUMBER. As I have before stated, the determination of whether the settler is acting in good faith or for speculative purposes is that he must hold the land for the period of five years unless he commutes, and even in the case of commutation he must show the absolute satisfaction of the Department by his own oath and that of witnesses and by corroborating circumstances that he did not take up this land for speculative purposes; that he had taken it up for a home and for nothing else, and that he had not attempted to sell and does not intend to sell it. I think that ought to make that part clear to the Senator.

Mr. TILLMAN. In this instance in Oklahoma with which I happened to come in contact last year by accident I discovered that there were men on the border there at the agency where the drawing was held, and that one out of six or seven got a prize. and the others did not. I knew of cases in which men were there with their applications for one of the homesteads who had no business applying for a homestead, because they never intended to go there and live; and how many of those men who drew the lots by lottery are not on the lands, but have commuted and sold out at a profit.

Mr. McCUMBER. That may be possible. I know nothing about it.

Before closing, I wish to say one word in reference to the position taken by the Senator from Connecticut [Mr. PLATT]. I agree with him entirely in the proposition that it is unjust to the Government to get any bill through here under a false pretense. We have opened up a number of reservations. The measures got the requisite number of votes upon the assumption and the pledge that the money which the Government had to spend in

purchasing the right of the Indians to the reservation should be paid back to the Government as soon as the lands were sold. Then immediately after that became a law and the lands were settled upon, then we would have petitions to make them free homes. I myself will not vote for any more legislation of that kind. It seems to me when we have purchased the reservations with that understanding, with that character of agreement, we should carry it out; but I will not sustain a proposition that we shall keep lands from being settled upon by the public simply because we have been compelled to pay for some of them a higher price than they are actually worth.

Mr. COCKRELL. Mr. President, from the remarks which have been made in regard to this bill one would suppose that there were a large number of men with their wives and children settled upon this Indian reservation waiting to make it their home, and that those of us who are opposing the measure are attempting to take from them—citizens of South Dakota—their right to free homes. This is an entire misconception. There is not one solitary homesteader upon the Rosebud Reservation. If he is there, he is there in violation of law, without a right on earth. It is to-day an Indian reservation, and the title is in the Indians. It is not the public domain of the United States. It never has been the public domain of the United States, because the Indians have the proprietary and possessory right to hold it indefinitely—forever. It is just as good as a fee-simple title.

The Senator spoke of Congress putting obstructions in the way of the advancement and development of South Dakota. These Indian reservations existed before Dakota existed. Those who inhabit South Dakota went there knowing of these reservations.

Mr. McCUMBER. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Missouri yield to the Senator from North Dakota?

Mr. COCKRELL. With pleasure.

Mr. McCUMBER. I merely want to correct the Senator in one respect. Many Indians from Minnesota and other places were taken into South Dakota and placed in a reservation there. So the reservation did not exist even for the Dakota Indians until we took the Sioux and the Chippewas of Minnesota and placed them in North and South Dakota.

Mr. COCKRELL. When was that done? It was done before it became a State in the Union.

Mr. McCUMBER. In 1851, 1852, and 1863.

Mr. COCKRELL. It was before it was a State. All these reservations were in possession of the Indians before the States existed as States in this Union. Congress is throwing no obstructions in their way, but we are trying to do justice to the citizens of the United States as well as to those who may want to make their homes there.

There are two sides to this question, and there are two parties interested in it. One is composed of the taxpayers of the United States, who have to bear the burden, and the other the favored few who by chance and by lot may secure a right to locate upon these lands.

There are no homesteaders there now. There is no man with his wife and babies and the old prairie schooner which has been referred to traveling there to make a home. There is not a particle of that. There is no right to homestead there. It is not public domain. The only question is, How shall Congress extinguish the Indian title to the lands and make the lands not public domain, but private-purchase property, to be disposed of by the United States as it thinks right and just and honorable?

There is no public domain about it. The question is, How shall we acquire title to the lands? The Indians have title to them. Shall we ratify this treaty? Shall we buy these lands, and then what shall we do with them? The

treaty says we shall pay the Indians. What is that? Buying private lands, paying the owner; and then what are we asked to do with them? To donate them to some persons, we know not who, living we know not where, who may by virtue of a lottery get a right to go on the land.

Mr. WARREN. May I ask the Senator from Missouri a question?

Mr. COCKRELL. Certainly.

Mr. WARREN. As a matter of fact, has not all our public domain been purchased in one way or another, and has it not cost the Government something?

Mr. COCKRELL. Not in this way.

Mr. WARREN. It cost a small sum per acre, but it cost the Government money.

Mr. COCKRELL. None of it was acquired in this way—not one foot of it. It was acquired for political and territorial reasons, in large quantities, unsettled and uninhabited, a wilderness, subject to the possessory and proprietary right of the Indians who were scattered here and there over it.

Mr. WARREN. Nevertheless, I will ask the Senator if it does not stand of record that while it may have cost but 10 or 15 or 20 cents an acre, all the public land open to homestead to-day is that which has in some way been purchased and for which something has been paid by the United States Government? It is simply a matter of difference in price as I look at it.

Mr. COCKRELL. I do not look at it in that light. It was not purchased as a part of the public domain. We did not pay the inhabitants of the Louisiana purchase a nickel of money for anything they had in it. It was a political transaction between the United States and France. We bought the land there. The people who were on the land and who had title to the land continued to have title to it. The balance was public domain.

Now, here are individuals, a band of individuals, with a clear title to the land, and this bill proposes to buy that land from them and pay the money to them. If we have the right to do that, and then to turn around and donate the land to those who may by lottery get a right to settle upon it, we have the same right to go into the State of Arkansas, the State of Missouri or any other State of this Union and buy land from individuals, citizens, and open it up for free homes. No man can gainsay the proposition. One is just as fair and honest as the other. They are upon an equal footing. That is what this bill proposes to do; nothing more, nothing less, nothing else.

I say it is not just; it is not right; it is burdening the taxpayers of this country with that which should not be imposed upon them. It is not for the poor man, not for the man struggling with his wife and babies for a home, but for the man worth millions, perchance, who may have a technical right to make a homestead and may be fortunate enough to draw a prize in the lottery. That is the kind of people we are appealed to to benefit and bless—men who have homes, and yet have never exhausted their homestead rights. Any of them can go there, I care not who it is, from any part of the United States, and, possessing the homestead right, get a free home, no matter what his property is.

Mr. CLARK of Wyoming. May I ask the Senator from Missouri a question?

Mr. COCKRELL. Certainly.

Mr. CLARK of Wyoming. I know the Senator intends to be exactly correct and accurate, but is it not a fact that nobody can enter upon these lands under the proposed amendment who has a homestead elsewhere; that he must comply with the five years' residence upon the land; that he must absolutely comply with the homestead law, and if he has a large amount of land

elsewhere, the homestead law absolutely prohibits him from taking advantage of this law?

Mr. COCKRELL. Any man who has the right to a homestead would have the right to go into this drawing.

Mr. CLARK of Wyoming. But if he goes into the drawing he goes into it subject—

Mr. COCKRELL. As a matter of course.

Mr. CLARK of Wyoming. Just one moment. But if he goes into the drawing he goes into it subject to the regulations and the law of homesteads, and is it not a little far-fetched to assume that a millionaire will spend five years upon the Dakota prairies in order to get a hundred and sixty acres of land worth \$2.50 an acre?

Mr. COCKRELL. Anyone having his homestead right unexhausted has a right to take his chance in getting a claim. The terms upon which he will get it after he has acquired that right is a different matter. He must comply with the law before he can get a patent. There is no question about that. But I say this measure is not for the benefit of persons who have a right now. It is not for the benefit of citizens of South Dakota that this bill is pending. Not at all.

We recently opened the Kiowa, Comanche, and Wichita land in the Indian Territory. I wish Senators to pay attention to this: That land was divided into 13,000 tracts of a hundred and sixty acres each. There was a registration called for of those who were eligible to make a selection and 165,416 people registered, claiming the 13,000 acres, over a hundred applicants for every tract of land. Now, does anybody suppose those were poor, struggling young men with their wives and babies who were there ready to make homes upon that land? How did they settle the contest? A hundred and sixty-five thousand applicants and 13,000 prizes. There was but one way—a lottery, pure and simple. Tickets were drawn

and the wheel of fortune started on its round and the lucky ones, 13,000, had the right to go upon the land.

The Senators from South Dakota and from other States are here reading and urging the passage of this bill. Probably a hundred thousand people will go there and apply for this land, and in the lottery the land will be divided into how many tracts—

Mr. TILLMAN. About twenty-four hundred.

Mr. COCKRELL. About twenty-four.

Mr. TILLMAN. Prizes.

Mr. COCKRELL. About twenty-four hundred prizes will be drawn, and these twenty-four hundred—Infinite Wisdom alone knows who they will be—are the objects of charity and sympathy, in whose behalf appeals are made to the Senate for the passage of this bill.

Senators, it is not right to pass it, because the bill is not right. I am as sympathetic as any man in the world, and no man has a warmer sympathy for the young man who is struggling in life to get a home for his wife and children, but I am not willing to tax the millions of young men with wives and children starting in life for the purpose of giving free homes to a few people—twenty-four hundred—who may be fortunate in the lottery. That is all there is in this bill. Shall we tax the struggling man to give twenty-four hundred men the chance of drawing a prize in a lottery? I can not see that it is just or right.

Now, it is claimed that we are reversing the policy of this Government; that it has always been the policy of this Government to give free homes. When did that policy originate? When was it the policy? Was it the policy when the pioneers from the Eastern States crossed the Alleghanies and went into the bloody land of Kentucky, or into Ohio, or Indiana, or Illinois? Not a bit of it. At first the Government charged \$2.50 an acre for the public land, and the people who went on them were pioneers.

They went there with their trusty rifles and ammunition. They went there to hew a home out in the wilderness and to drive back the Indians. They took all the chances, and yet they had to pay \$2.50 an acre for their land.

Finally the price was reduced to a dollar and 25 cents an acre. Practically all the lands in Indiana and Illinois were disposed of at a dollar and a quarter an acre. The settlers paid the money into the Treasury. The people of the United States have received the benefit of it. In Missouri it was largely the same way. In Iowa it was largely the same way. Nine-tenths of the people there had to pay for their homes at a dollar and 25 cents an acre, until the graduated law of 1853-54, which reduced the price according to the number of years the land had been subject to entry, reducing it down as low as 25 cents an acre or less.

Mr. President, when did free homes arise? In 1862, for the first time in the history of this Government, the homestead law was enacted. It had been pending in Congress since the days of Mr. Benton, who had advocated it early in his career, and yet it was never enacted into law until 1862. There were reasons for it then. There were political reasons for it then. There were just reasons for it then. Our country was then engaged in the most fearful civil strife which ever paralyzed the energies of any great nation.

Mr. TELLER. Will the Senator from Missouri allow me to make a suggestion to him? Before the war, when I suppose nobody expected a war, Congress passed a free-homestead act, and it was vetoed by the President.

Mr. COCKRELL. It was not a law.

Mr. TELLER. No; it was not a law, but it was the Congressional mind and intention to have free homes.

Mr. COCKRELL. Now, in that struggle we had enlisted, in the Union Army thousands upon thousands

of men, many of whom had come from foreign lands and had no homes here. They had rendered their adopted country a great service. We passed this bill giving the right to the soldier to go and homestead the land and count his service as a part of the five years. It was a generous act, a just act, a liberal act upon the part of the Government. It induced many thousands of foreigners to become citizens and to go upon the lands and make their homes; and they have been doing it since.

Then we had millions of acres of tillable land, arable land, with all the climatic conditions necessary for supporting a population and developing the agricultural resources of the country. We had them in abundance; we had public lands in Missouri; we had public lands in Iowa. Lands were not scarce; they were abundant, and in justice, and in right, and in munificence this Government passed the homestead law. It was right then.

If we had the same condition, it would be right to-day. Nobody ever dreamed that that munificent law would be perverted to the idea that this Government has a right to go and buy private land at \$2.50 or \$5 an acre and then turn around and call it public domain. No, Mr. President, there was never any such contemplation.

This is not public domain in the strict or correct sense of the word. We would have the same right to go into Iowa, or into Minnesota, or into any other State of this Union and buy private lands, and call them public lands, and make them a part of the public domain, and give them away as homes to people as we have to go and buy land from the Indians and do it. There is no justice in this.

But from the arguments it would seem that the Government had already established a policy of making free homes out of Indian reservations. Let us see when the free-homes law was passed. The free-homes law in

regard to Indian land was passed May 17, 1900. Was it a general law? Was it a law for the future or was it a law for special cases which then existed? Senators who were then here will remember that upon the opening of the lands in Oklahoma and that part of the country thousands of people flocked there. There was a drought one or two seasons in succession. The people failed to raise crops. They had promised to pay for the land. Congress was called upon to extend the time of payment. It was extended.

Still appeals were being made; sympathy was aroused; another extension of time was given by Congress for the payment of the purchase money for the land. The sympathy of the people was appealed to. The forlorn condition of the settlers was painted in grewsome colors, and we were asked to let them have their homes. They were there; they were in debt; they could not pay the price the Government was exacting, and out of sympathy and because of these appeals a law was passed, not for the future, but for these cases of supposed suffering. I will read it.

That all settlers under the homestead laws of the United States upon the agricultural public lands, which have already been opened to settlement, acquired prior to the passage of this act—

“Which have already been opened to settlement, acquired prior to the passage of this act”—

by treaty or agreement from the various Indian tribes, who have resided or shall hereafter reside upon the tract entered in good faith for the period required by existing law, shall be entitled to a patent for the land so entered upon the payment to the local land officers of the usual and customary fees, and no other or further charge of any kind whatsoever shall be required from such settler to

entitle him to a patent for the land covered by his entry: *Provided*, That the right to commute any such entry and pay for said lands in the option of any such settler and in the time and at the prices now fixed by existing laws shall remain in full force and effect.

Mr. TILLMAN. Mr. President—

The PRESIDING OFFICER (Mr. KEAN in the chair). Does the Senator from Missouri yield to the Senator from South Carolina?

Mr. COCKRELL. Certainly.

Mr. TILLMAN. I will remind the Senator also that in the appeals made to us here it was stated that unless we did grant that relief by giving these homes, the capitalists who had loaned money to help build houses and improve the holdings would absorb and gobble up the whole business, and it was to prevent the absorption by capitalists of those homesteads that we put that bill through here.

Mr. COCKRELL. I thank the Senator from South Carolina for his suggestion. Everyone remembers that we were told they were going to be sold out under deeds of trust, and the only salvation was a donation of the land and free homes. That bill was passed through sympathy. If this bill is passed it will be by sympathy. It will not be passed upon the broad basis of equal and exact justice to all and special favors to none. It will be a law of favoritism, pure and simple, a law of gratuity to twenty-four hundred people who may in a lottery be the successful drawers of prizes for this land.

Therefore, Mr. President, under no circumstances can I vote for the provision that is now in the bill.

Mr. CLARK of Wyoming. Mr. President, we might relieve the situation in the question of the taxation of the old States for the benefit of the new if the older States

would return a small part of the \$28,000,000 which the Government received from the public lands a great many years ago and loaned to the States subject to call, which has never been returned, nor will it ever be returned.

Mr. TILLMAN. Mr. President, I hope the Senator who has just spoken does not lay claim to any money the United States has received for its own property before any State which was created later had any existence.

Mr. CLARK of Wyoming. No; this is what I mean to say: Complaint is made that taxation is to be imposed upon the people of the whole United States to pay for this land in buying it from the Indians when the only beneficiaries will be the 1,300 or 1,400 people. I say we can relieve that situation and prevent the tax from being levied if the older States, who have received from the Government loans on the money heretofore received from the sale of the public lands of the Government to the amount of \$28,000,000, will turn back into the Treasury about \$1,000,000 of that sum and thereby save those taxes.

Mr. TILLMAN. If that is the programme, I suppose some one will introduce a bill to require those loans to be returned.

Mr. CLARK of Wyoming. No; that is not the question. The question is simply this: It comes with bad taste from those States which claim that the buying of this land for \$1,000,000 of public money works a hardship when they have already in their coffers \$28,000,000 of the Government's money which was loaned to those States and never has been returned.

Mr. TILLMAN. But I do not think—

Mr. CLARK of Wyoming. Nobody is questioning the right of the States to keep it, and nobody will. It is simply an illustration.

Mr. TILLMAN. The illustration does not seem to illustrate, for the simple reason that those older States at

that time were the United States. They divided among themselves their own property, and the Government reserved the right to call for the loan in an emergency, when the States would respond.

Mr. CLARK of Wyoming. I do not think the Senator fully understands the loan of which I was speaking.

Mr. TILLMAN. I will be very glad if the Senator will enlighten the ignorance of the Senator from South Carolina.

Mr. CLARK of Wyoming. The Senator from Wyoming does not assume any ignorance on the part of the Senator from South Carolina.

Mr. TILLMAN. He only asserts it.

Mr. CLARK of Wyoming. I am speaking of only this one particular thing.

Mr. PLATT of Connecticut. Mr. President, I regret that the Senator from Wyoming has introduced the subject to which he has just alluded. There is no sectionalism about this measure. There is no question in it as between the older States and the newer States. I think the new States have been pretty well dealt with by the older States. We had in every new State great numbers of acres of public land, and when they were made States we have given it to them as a free gift. If you come and consider the question as to whether the new States or the old States have derived the most advantage from the public lands, the benefit is all, I think, in favor of the new States. In this very bill it is proposed to give the State of South Dakota two sections of land in each township, when by the act which admitted South Dakota into the Union it was provided that the grant of land of two sections in a township should not apply to the Indian reservations in that State. We are not dealing unjustly by the new States. We are giving them over and over more than the old States ever derived from the distribution of the proceeds of the sale of the public land.

Mr. GAMBLE. I will ask the Senator if it is not true that the act for the admission of the State of South Dakota also provided that when Indian-reservation lands were restored to the public domain there should be carried to the State sections 16 and 36 for school purposes? Was not that in the same law.

Mr. PLATT of Connecticut. I read the provision here the other morning. I simply rose to say that I regretted the Senator from Wyoming should attempt to inject into this debate any question between the older States and the newer States.

Mr. CLARK of Wyoming. Will the Senator permit me?

Mr. PLATT of Connecticut. Certainly.

Mr. CLARK of Wyoming. I do not want to stand in a false light on account of the remark of the Senator from Connecticut. I simply replied to the observation of the Senator from Missouri that it was unjust to tax the older States for lands purchased in the newer States.

Mr. PLATT of Connecticut. Mr. President, speaking for myself, I well remember the time when as chairman of the Committee on Territories I helped to get six of the Western Territories into the Union, very much against the views of some people whom I represented; but I thought it was just. In each one of those acts thousands and hundreds of thousands of acres of the public land were given. I think 500,000 acres of the public land were given as a free gift to each of those States.

Mr. DIETRICH. Mr. President, I should like to call the attention of the Senate to one proposition. When this land is opened for settlement, one-fourth of the land will be owned by Indians. They will own the best portion of that tract of land. Those Indians will not be obliged to pay any taxes, all the taxes falling upon the whites who will own the land. The expense of all the improvements, public highways, public schools, and public buildings

must be borne by the whites. Therefore I believe that we ought to act generously with those settlers who are willing to go among those Indians, and who are to pay the taxes and make the improvements which will be placed there for the benefit of those Indians.

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from Connecticut [Mr. PLATT].

Mr. PLATT of Connecticut. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BACON. I ask that the amendment may be read.

The PRESIDING OFFICER. The Secretary will read the amendment.

The SECRETARY. In section 3, page 6, line 18, after the word "acre," strike out the remainder of line 18, all of lines 19, 20, 21, 22, 23, 24, and 25, down to and including the word "that," and insert the word "and;" so that if amended the proviso will read:

And provided further, That the price of said lands shall be \$2.50 per acre, and homestead settlers, who commute their entries under section 2301, Revised Statutes, shall pay for the land entered the price fixed herein.

Mr. BACON. Will the Secretary please read the language proposed to be stricken out by the amendment?

The PRESIDING OFFICER. The Secretary will read as requested.

The SECRETARY. It is proposed to strike out the following words:

but settlers under the homestead law, who shall reside under and cultivate the land entered in good faith for the period required by existing law, shall be entitled to a patent for the lands so entered upon

the payment to the local land officers of the usual and customary fee and commissions, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry, except that—

And to insert “and.”

The PRESIDING OFFICER. The Secretary will call the roll on agreeing to the amendment of the Senator from Connecticut [Mr. PLATT].

The Secretary proceeded to call the roll.

Mr. GIBSON (when his name was called). I am paired with the junior Senator from New York [Mr. DEPEW]. I am informed that if he were present he would favor the bill and would oppose this amendment. I will therefore vote on this question. I vote “nay.”

Mr. HANSBROUGH (when his name was called). I transfer my pair with the senior Senator from Virginia [Mr. DANIEL] to the senior Senator from Rhode Island [Mr. ALDRICH], and vote “nay.”

Mr. MALLORY (when his name was called). I have a general pair with the senior Senator from Vermont [Mr. PROCTOR]. If he were present I should vote “yea.”

Mr. McLAURIN of Mississippi (when Mr. MONEY's name was called). My colleague [Mr. MONEY] is unavoidably absent on account of sickness. He is paired with the junior Senator from Iowa [Mr. DOLLIVER]. My colleague has a general pair with the junior Senator from Iowa.

Mr. CLAPP (when Mr. NELSON'S name was called). My colleague [Mr. NELSON] is confined to his room by illness.

Mr. PETTUS (when his name was called). I have a general pair with the senior Senator from Massachusetts [Mr. HOAR].

Mr. QUARLES (when his name was called). I have a general pair with the senior Senator from Texas [Mr. CULBERSON]; therefore I will withhold my vote.

Mr. MALLORY (when Mr. TALIAFERRO'S name was called). My colleague [Mr. TALIAFERRO] is unavoidably absent. He had a general pair with the junior Senator from West Virginia [Mr. SCOTT].

The roll call was concluded.

Mr. PERKINS. I desire to state that my colleague [Mr. BARD] is unavoidably absent from the Senate, on account of sickness.

Mr. BATE. I will state that my colleague [Mr. CARMACK] is absent, and is paired with the Senator from Wisconsin [Mr. SPOONER].

The result was announced—yeas 19, nays 38; as follows:

YEAS—19.

Allison,	Foster, La.	Martin,
Berry,	Hawley,	Morgan,
Clay,	Kean,	Platt, Conn.
Cockrell,	Lodge,	Platt, N.Y.
Cullom,	McComas,	Tillman,
Daniel,	McLaurin, Miss.	Wetmore.
Dillingham,		

NAYS—38.

Bacon,	Foraker,	Mitchell,
Bate,	Foster, Wash.	Patterson,
Beveridge,	Gamble,	Perkins,
Blackburn,	Gibson,	Pritchard,
Burnham,	Hanna,	Rawlins,
Burrows,	Hansbrough,	Simmons,
Burton,	Harris,	Simon,
Clapp,	Heitfeld,	Stewart,
Clark, Wyo.	Jones, Ark.	Teller,
Deboe	Kittredge,	Turner,
Dietrich,	McCumber,	Warren,
Dubois,	McMillan,	Wellington.
Fairbanks,	Millard,	

NOT VOTING - 31.

Aldrich,
Bailey,
Bard,
Carmack,
Clark, Mont.
Culberson,
Depew,
Dolliver,
Dryden,
Elkins,
Frye,

Gallinger,
Hale,
Hoar,
Jones, Nev.
Kearns,
McEnery,
McLaurin, S.C.
Mallory,
Mason,
Money,

Nelson,
Penrose,
Pettus,
Proctor,
Quarles,
Quay,
Scott,
Spooner,
Taliaferro,
Vest.

So the amendment of Mr. PLATT of Connecticut was rejected.

The PRESIDING OFFICER. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business.

Mr. GAMBLE. I ask that the bill in regard to the ratification of the agreement with the Indians of the Rosebud Reservation be taken up to-morrow morning at the close of the routine morning business in the hope that it will then be finally disposed of.

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Dakota. The Chair hears none, and it is so ordered.

[35 Cong. Rec. 5013 (1902)]

AGREEMENT WITH INDIANS ON ROSEBUD RESERVATION.

Mr. GAMBLE. Mr. President, I ask unanimous consent that the bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the

same into effect, be taken up for consideration on Monday morning immediately after the morning business, and that its consideration be proceeded with until disposed of.

The PRESIDING OFFICER. The Senator from South Dakota asks unanimous consent that the bill referred to be taken up for consideration on Monday morning after the routine morning business. Is there objection to the request? The Chair hears none, and that order is made.

[35 Cong. Rec. 5019-5024 (1902)]

AGREEMENT WITH INDIANS OF THE ROSEBUD RESERVATION.

The PRESIDENT pro tempore. The Chair lays before the Senate Senate bill 2992.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect.

Mr. TELLER. There is an amendment pending which I offered. It is to strike out in section 3, line 25, page 6, after the word "entry," and the balance of the section, which takes the first three lines on page 7, and then to insert:

No person taking a homestead under the provisions of this act shall be allowed to commute under the provisions of section 2289 or 2391 of the Revised Statutes.

The PRESIDENT pro tempore. The Senator from Colorado offers an amendment, which will be stated.

The SECRETARY. In section 3, page 6, line 25, after the word "entry" strike out the remainder of the section, in the following words:

Except that homestead settlers who commute their entries under section 2301, Revised Statutes, shall pay for the land entered the price fixed herein.

And to insert:

No person taking a homestead under the provisions of this act shall be allowed to commute under the provisions of section 2289 or 2301 of the Revised Statutes.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Colorado.

Mr. PLATT of Connecticut. Mr. President, this matter has been so long before the Senate that the Senate is tired of it, and yet it is an important matter and it ought not to be disposed of without full consideration.

With regard to the pending amendment, the proposition is to apply a different rule for the securing of homesteads to this reservation and the lands which are to come into settlement from what is applied to any other lands in the United States. I do not think that there should be an exception made with regard to this reservation. The law as it now stands, if I am correct, is that upon any of the public lands of the United States a person may obtain a homestead entry, and it requires him to live upon the land for five years, at the end of which time he may obtain a patent without any payment to the Government. But the law also provides, if I am correct, that in all such cases of homestead entries the person who goes upon the land as a homesteader may commute his holding at the end of fourteen months by paying to the Government a dollar and a quarter an acre, unless other rates have been fixed by different acts of Congress.

Now, that is the general land policy of the United States. If we are ready to repeal as to all lands the commutation provision, then it is all right; but so long as we are to keep it with reference to other lands, I know of no reason why it should be repealed as to these lands, which are to be opened for settlement.

There has been a good deal said to the effect that the commutation clause is the one which leads to fraud or speculative entries upon the public lands, but it is a clause which is both for the benefit of the Government and the benefit of the settler. It is for the benefit of the Government in this way: If the entry is commuted, the Government receives pay for the land. It is for the benefit of the settler in this way: He can put no mortgage upon his property; he can neither encumber it nor sell it until the end of five years without the commutation privilege. He can, with the commutation privilege, if he can find friends to advance the money, get a perfect title to his land in fourteen months from the time he settles upon it. That enables him to acquire the means by which the better to improve his holding. It has been for many years the settled policy of the Government that he should have that opportunity.

I do not wish to take up more time with this matter, but I wished to make this statement of the situation. I do not believe it wise to make one section of land which is open to homestead entry subject to the commutation law and another one not subject to the commutation law.

Mr. STEWART. Mr. President, what troubles me about this case is the price of the land. We have not sufficient information on the subject, it seems to me, to pay \$2.50 an acre for the land. The best of it, along the streams, has been already allotted to the Indians, and inasmuch as the treaty may remain pending until next March, I think it would be a wise course to recommit the bill and let us

have an investigation of the price of the land. There is not enough evidence to satisfy my mind that it is worth \$2.50 an acre, and I am not prepared to vote for the bill with the knowledge I have. It seems to me that the price is too high. If we go on in this way we shall have to spend a vast amount of money for the land.

In order to test the sense of the Senate, I move to recommit the bill to the Committee on Indian Affairs, so that we may have more information as to the price of the land before it is finally acted on by the Senate. I make that motion.

Mr. MORGAN. Mr. President, I desire very much indeed to vote for any bill that would facilitate the improvement of the State of South Dakota or any of the Northwestern States, but there is a principle involved in this bill that I can not reconcile myself to support. It is the lottery principle. Why should the United States Government condemn in a criminal and highly penal statute all lottery arrangements of every kind and then turn around and by a statute invite the people from all over the United States to come and enter into a drawing of lands in South Dakota? We simply stultify ourselves, in my judgment, in abandoning that principle which has worked so much good in this country. The suppression of the lottery system in the United States has worked one of the greatest moral reforms we have ever inaugurated in this country.

I notice that other governments, particularly the Government of France, resort to the lottery scheme for the purpose of raising money out of the people to carry on works of improvement, and it seems to encourage a disposition to gamble and to sanction the principle that gambling must be restored to here to get rid of public lands.

It is true these men do not put up anything except their homestead qualifications against a tract of land, but there are hundreds of thousands of tramps and hoboes in this country who are entitled to qualify. If I were living in a State like South Dakota, or any of the Northwestern States, I think I would not like to fill up the population of that State by men invited in under such circumstances. I would rather wait and let a decent, strong, earnest population come in there who are able to take care of themselves, and not bring in the poorest off scourings of the earth, or men who might gamble themselves into an opportunity to make a settlement there.

The principle of the bill, in my judgment, is wrong, and I am obliged to vote against it.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Nevada [Mr. STEWART] to recommit the bill.

The motion was not agreed to.

The PRESIDENT pro tempore. The question now is on the amendment offered by the Senator from Colorado [Mr. TELLER].

The amendment was agreed to.

Mr. GAMBLE. I submit the following amendment.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. Amend the bill, section 3, line 16, page 6 by striking out after the words "*And provided further, That*" the words "the price of said lands shall be two dollars and fifty cents per acre, but;" so as to make the additional proviso read:

And provided further, That settlers under the homestead law who shall reside upon and cultivate the land entered in good faith for the period required by existing law shall be entitled to a patent for the lands so entered, etc.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from South Dakota [Mr. GAMBLE].

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. HANSBROUGH. Mr. President, in connection with this measure, I desire to have inserted in the RECORD that portion of the report of the Secretary of the Interior describing the manner of disposing of Indian lands by lot. It is a very interesting report, and I will also ask that it be printed as a document.

The PRESIDENT pro tempore. The Senator from North Dakota asks that the papers sent to the desk by him may be printed in the RECORD and also printed as a document. Is there objection? The Chair hears none, and that order is made.

The report referred to is as follows:

REPORT OF W. A. RICHARDS, ASSISTANT COMMISSIONER OF THE GENERAL LAND OFFICE,
RESPECTING OPENING OF KIOWA, ETC.,
LANDS IN OKLAHOMA.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, October 9, 1901.

The SECRETARY OF THE INTERIOR.

SIR: I have the honor to submit the following report respecting the opening to settlement and entry of the Kiowa, Comanche and Apache, and Wichita lands situated in the Territory of Oklahoma, ceded to the United States under agreements respectively ratified by the acts of March 2, 1895, and June 6, 1900.

Acting under instructions dated May 13, 1901, I subdivided the territory embraced in the above-named lands into three counties, after having first attached to some of the surrounding counties small portions of the lands more properly belonging to those counties.

The county embracing the lands to the northeast was named Caddo County; the one embracing the lands to the northwest was named Kiowa County, while the one embracing the lands to the south was named Comanche County.

Sites were also selected for the county seats of these new counties, that for Caddo County being in the immediate vicinity of Anadarko station on the Chicago, Rock Island and Pacific Railroad, which was named Anadarko; that for Kiowa County being near the station of Kiowa on the above-named railroad and named Hobart, while the site for the county seat of Comanche County was located 5 miles south of Fort Sill and named Lawton. These town sites each embraced 320 acres and were surveyed into blocks, lots, streets, and alleys. The surveys of these town sites were made by examiners of surveys detailed from the General Land Office for that purpose.

The location of the boundaries of the three new counties and of the town sites for their respective county seats was completed upon June 11, 1901, and a detailed report of my action in connection therewith was submitted and approved.

The expenses incident to the surveying, subdividing, and platting of the town sites, reimbursable to the Government from the sale of lots by the act of March 3, 1901, were \$5,284.24, as set forth in the itemized statement herewith submitted.

REGISTRATION.

In accordance with your letter of June 29, 1901, under which I was instructed to take charge of the prospective opening of the Kiowa, Comanche and Apache, and the Wichita reservations, I proceeded to Elreno, Okla., arriving at 2 o'clock a.m. of July 10, the day upon which registration was to begin.

Under date of July 4, 1901, the Commissioner of the General Land Office, by direction of the President, established two new land districts in Oklahoma—the Elreno land district, which includes the Wichita Reservation and the northern portion of the Kiowa Reservation, with the land office at Elreno, and the Lawton land district, which includes the remaining portion of the Kiowa and Comanche and Apache reservations, with the land office at Lawton.

By the proclamation of the President of July 4, 1901, Elreno and Lawton were designated as places of registration, it being provided that the registration at each office should be for both land districts, but that at the time of registration each applicant should be required to elect and state in which district he desired to make entry. It was calculated that under this plan three-fourths of those desiring to make entry would register at Elreno and one-fourth at Lawton, which estimate proved to be practically correct. Thirty-three clerks were detailed from the General Land Office to make the registration, 8 of whom went to Lawton and 25 to Elreno.

The proclamation also provided that the office at Lawton should occupy provisional quarters in the immediate vicinity of Fort Sill until suitable quarters could be provided at Lawton. Under authority obtained from the honorable Secretary of War, the registration for the Lawton district was made at Fort Sill, where a commodious building was furnished for the use of the clerks. The registration at

this point was very greatly facilitated by the efficient service rendered by the commanding officer, Maj. G. L. Scott and the officers and men under his command. A very large proportion of those who registered at Fort Sill came there in wagons and went into camp in the valley of Cache Creek, upon the military reservation. During a portion of the period of registration this camp contained more than 10,000 people. Good order prevailed both in the camp and at the registration booth, which speaks well for the efficiency of those in charge of the registration, the military, and the people themselves.

The registration at this place proceeded in a perfectly orderly manner throughout the entire period and was concluded at 6 p.m. of July 26 with a total registration of 29,000, and no qualified applicant was left unregistered at the close of business. Upon the conclusion of the registration, the clerk in charge were transported to the railroad station, 39 miles distant, in Government ambulances kindly furnished by Major Scott, and at 5 o'clock a.m. of July 27 reported for duty to me at Elreno.

The clerks who were to make the registration at Elreno reached that place at 2 a.m. of July 10, and at 10 a.m. of that day began the registration at six booths, which had been previously secured and furnished. Four clerks were placed in each booth to work under the direction of one of their number designated as chief.

Upon the opening of the booths several thousand people were in line before them, some of them having been there more than twenty-four hours. There being a great many women in the lines, I proceeded to secure and furnish a booth to be used exclusively by women, and opened the same at 1 o'clock p.m. of July 10 with two land-office clerks and two clerks temporarily employed, the places of

these two clerks in their respective booths being filled by hiring two additional temporary clerks.

The establishment of this booth was heartily indorsed and highly appreciated by the women, of whom about 8,000 were registered there. As they were not prohibited from registering at the other booths, it is estimated that about 2,000 were so registered, making an estimated total of 10,000 women who were registered at Elreno.

Upon July 10, the first day of registration, 4018 people were registered, which was very satisfactory, all things being considered.

As it was necessary that applications for registration should be sworn to before being presented to the registering clerks, notaries public, clerks of courts, justices of the peace, and other authorized to administer oaths engaged in the business of preparing such papers. At first exorbitant charges were made for such services. To correct this practice I refused to furnish blanks to any officer who would not agree to charge but 25 cents for his services in each case, which resulted in fixing that amount as the general charge. At Fort Sill, where, on account of the military supervision, the matter could be more easily controlled, the charge was fixed at 10 cents.

Upon July 13, through an accident to the pumping machinery at the water works, water was shut off from the mains supplying Elreno with water. The weather was very hot, and there were not less than 15,000 transient people in the city, making the situation one of great seriousness. Unless it could have been remedied at once it would have been necessary to have transferred the registration to some place where there would have been sufficient water. In conference with the city officials, this fact was impressed upon them and it was urged that immediate steps be taken to repair the waterworks.

It was also suggested as a means of temporary relief that casks, with drinking cups attached, be placed at convenient places upon the streets and kept filled with water obtained from wells, with a cake of ice in each cask. These suggestions were acted upon without delay, the water works were speedily repaired, and the public drinking places provided and found to be so useful that they were maintained during the entire period of registration.

In this connection I take pleasure in stating that during the registration and the drawing which followed it the people of Elreno put forth every exertion to provide for the comfort and convenience of the strangers who visited their city. There was no raise in the prices of any of the commodities or accommodations necessary to their comfort, and while for thirty days the city contained more than ten times its normal population, there were no hardships nor suffering, but all were well cared for and made comfortable at very reasonable expense.

The registration progressed in an orderly manner, but on account of the applicants being largely in excess of the number which had been expected it became necessary to employ additional assistance. Booth No. 1 was so situated that a greater number of people applied for registration there than at any other point, and the largest number of clerks employed in one place were in this booth. It was used as a training school, from which clerks could be taken as needed for use in other booths. By keeping fully informed of the movement of trains upon the railroads entering Elreno I was enabled to so arrange the clerks as to be continually prepared to speedily register the great numbers of people who arrived daily. After the second day no unregistered people were left in front of the booths when they were closed for the night. The time appointed for the opening of the booths was 8 o'clock a.m., but they

were frequently opened earlier by the voluntary action of the clerks. The hours of closing were regulated by the number of people who arrived during the day, but 5 o'clock p.m. was the general hour for closing.

Upon Wednesday, July 24, the reports from the railroads and the numbers of people present indicated that the registration would be unusually large, for which we were fully prepared. Between the hours of 8 a.m. and 12 o'clock noon 11,556 people were registered. As eight heavily loaded trains were due to arrive between 4 and 6 p.m., it was arranged that the booths should be kept open until 8 o'clock or until everybody who so desired had been registered. We were disappointed by the railroads, however, and only two of the trains arrived before 8 o'clock, the total registration for the day being something in excess of 16,000.

Registration was effected by the applicant presenting a sworn statement of his qualifications and his desire to be registered, which was received and filed. A small blank was then filled out with the description of the applicant, the name of the land district in which he desired to make homestead entry, and his post-office address, which he signed, after which he was given a certificate of registration.

Upon July 11 a force of clerks was engaged and, in charge of an experienced clerk, was employed in separating by districts and arranging in alphabetical order the applications and identification cards received at the booths on the preceding day. After having been placed in order, each identification card was compared with its corresponding application, and by this means any errors which might have occurred in the registration were corrected. At the same time a typewritten list was made for each district, embracing the names of those registered for that district, each day's work alphabetically arranged.

The applications, identification cards, and lists for each district were subsequently placed in the respective land offices and afford a means of detecting any frauds which may have been attempted through double registration or the attempt to impersonate another person in making an entry.

After the first week of registration the applications of soldiers to register by agent became so numerous and so impeded the registration of others that it became necessary to organize a separate booth for the registration of soldiers by soldiers' agents, which booth was placed in charge of an efficient clerk, and in which were located the register and receiver of the Elreno office, who rendered faithful and efficient service.

It is believed that the fact that all soldiers' agents were required to register at one booth prevented some designing men from attempting to act as agent for more than one soldier, which they might have done successfully if allowed to register at any of the other booths.

Upon Friday, July 26, registration was closed in every booth simultaneously at 6 o'clock p.m., the chief of each booth having set his watch by city observatory time, in addition to which the city fire bell was struck at that hour. At the time of closing there was no unregistered person in front of any booth in the city.

The total registration at Elreno was 135,416. Upon the first day of the registration there was considerable disorder at several of the booths at this place, the people appearing to have an idea that it was necessary for them to secure and hold their positions in line by force and to take every means to guard their own interests. In a very short time they appeared to become satisfied that they were to receive fair treatment; that there would be no favoritism, and that the entire matter was to be

honestly managed, after which there was absolutely no disturbance of any kind in connection with the registration. In fact, there was very little disorder of any character in the city at any time, notwithstanding its overcrowded condition.

Upon the conclusion of the registration all of the land-office clerks were immediately employed in placing the identification cards in proper envelopes and sealing the same, which had been delayed until this time by the fact that it was impossible to obtain the envelopes in time to place the cards in them when the registration was made.

I consider that it was an advantage to those who registered that the cards should not have been placed in the envelopes at the same time that the registration was made, as by the delay an opportunity was afforded to compare each identification card with the sworn application, thus affording a complete check upon the registration and a means of correcting any errors that might have been made in the rush of work.

The identification cards were carefully guarded during the day, at the time of registration, by being placed in locked cash boxes through a slit cut for that purpose, no one but myself having a key to any of these boxes. At night these cards were placed in the vault of the Citizens' State Bank, of El Reno, and were taken out only upon my order.

No one but land-office clerks were employed in placing these cards in the envelopes, which was completed about 4 o'clock of Sunday, July 28, this being the only Sunday upon which we found it necessary to work.

THE DRAWING.

By your letter of July 20, 1901, Hon. David P. Dyer, of Missouri; Hon. Frank Dale, of Oklahoma,

and myself were appointed a committee to have the supervision of the drawing to determine the order in which registered applicants would be permitted to make entry in conformity with the President's proclamation of July 4, 1901, of which committee I was appointed chairman.

This committee first met at Elreno on the evening of the 25th day of July and readily agreed upon the plan by which the drawing should be conducted. In pursuance thereof a platform 32 feet square was erected in one of the streets of the city, fronting the high-school grounds, which rose gradually from the platform, affording ample space for those desiring to witness the drawing. A canvas roof covered the platform and canvas curtains were provided with which to inclose its sides in case of a storm.

Two boxes were constructed in which were to be placed the envelopes containing the names of those who had been registered. Each of these boxes was 10 feet long, 2½ feet deep, and 2½ feet wide, with an iron rod running the entire length through the middle of each box, securely fastened. Iron bolts were placed in either end of the boxes and served as pivots upon which the boxes could be revolved. On one side of each box there were three openings about 2 feet apart for the purpose of receiving the envelopes. On another side of each box there were five holes, each separately numbered, large enough to admit the hand and arm of a person and through which the envelopes were to be drawn. These holes were covered with slides except when opened for the purpose of withdrawing an envelope.

On the morning of the 29th of July, at the hour designated in the President's proclamation for the drawing, these boxes were taken upon the platform and placed upon trestles, upon which they could be revolved. The envelopes, containing the names of all who had been registered, were also brought upon

the platform. These envelopes had been separated according to the respective land districts, were of two colors, one being buff and the other white, and bore no distinguishing mark other than the name "El Reno" on those for one district and "Lawton" on those for the other. The envelopes were in pasteboard boxes, each of which contained 400 envelopes, and the boxes for each district were consecutively numbered. Small cards had been prepared bearing numbers corresponding to the numbers upon the envelope boxes, which cards were placed in a receptacle, from which they were drawn at random, and the envelope boxes taken in the order in which the cards were drawn and their contents placed in the larger boxes, a portion of each box through each of the three larger openings, and well scattered throughout the entire length of the box.

When all of the envelopes had been thus placed, these openings in the drawing boxes were closed and securely sealed, and the boxes revolved until the envelopes were thoroughly mixed. Ten reputable young men had been selected, all of whom were under age and therefore not registered and in no-wise interested in the drawing, to draw the envelopes from the boxes. These young men were assigned to the holes in these boxes by lot, and it was also determined by lot which one should begin the drawing at each box. The young man at the hole numbered 3 drew the number entitling him to take the first envelope from the Elreno box, and the young man at the hole numbered 4 drew the number entitling him to take the first envelope from the Lawton box, the drawing thereafter to continue in numerical order.

The drawing began with the Elreno box by the young man at hole No. 3 drawing an envelope, which he handed to Mr. Dale, of the committee,

who caused the same to be numbered 1. He then opened the envelope and took therefrom the identification card and caused the same number to be placed upon it, and then handed the card to Mr. Richards, of the committee, who inspected the same and in turn handed it to Mr. Dyer, of the committee, who announced the name and description of the person to the people. This course was followed until 25 envelopes had been drawn from the Elreno box, after which the box was closed and 25 envelopes were drawn from the Lawton box in the same order and disposed of in the same manner, after which this box was closed and both boxes securely sealed and adjournment taken until 2 o'clock p.m.

Great interest was shown by the people in this part of the drawing, and it was estimated that there were not less than 30,000 present to witness it. The location of the stand and the elevation of the grounds surrounding it were such as to enable all to have a fair view of the proceedings. There was no disorder of any kind, and the announcement of the names drawn was received with great applause.

In the afternoon of this day the drawing was continued until 500 names had been drawn from each box, the same order observed in the drawing of the morning being followed, except that instead of the announcement being made from the platform typewritten lists were prepared, which were taken out into the midst of the audience and read and then posted upon bulletin boards which had been provided for that purpose.

Provision had been made upon the stand for the accommodation of newspaper reporters, of whom a large number were in attendance, and to whom manifold copies of these typewritten lists were furnished and by them supplied to their respective newspapers. All of the daily papers of Oklahoma and many of those of the States of Kansas, Missouri,

and Texas published complete lists of the names and numbers of the first 6,500 drawn for each land district, thus affording notification to those interested.

While the drawing of names was in progress a force of land-office clerks was engaged in preparing postal-card notices to those whose names had been drawn, which were placed in the post-office upon the evening of that day. This course was followed during the entire drawing of the 6,500 names from each land district, the postal cards being mailed on the same day upon which the names were drawn.

At the close of the first day's drawing the boxes were sealed up and left in charge of some of the land-office clerks and a guard of deputy United States marshals, which course was pursued during the entire period of the drawing.

The drawing was continued upon the platform at the rate of 2,000 per day for each land district until the total of 6,500 envelopes had been drawn for each district, which covered a period of four days. The drawing of this number might have been concluded in a shorter space of time, but it was not deemed advisable, as the number drawn per day was as large as the newspapers could conveniently handle. As it was estimated that there was only a sufficient amount of land in each land district to supply 6,500 entrymen, only that number in each district were notified to appear at the respective land offices upon stated days.

Upon the conclusion of the drawing of these 6,500 names for each land district the boxes were removed to a building where the drawing could be more expeditiously conducted and where it was continued in the same manner, each envelope and identification card being given corresponding numbers. The drawing continued until the afternoon of the 6th of August, when the whole number of

envelopes deposited in the two boxes had been separately drawn and numbered.

The postal-card notices for all of the 6,500 names drawn for each land district were mailed by land-office clerks, who exercised great care in this work in order that each one might be properly notified. Upon the conclusion of the mailing of these essential notices a force of clerks was employed, who were nearly all residents of Elreno, and placed in charge of a competent land-office clerk and proceeded to mail notice of the number drawn by each of the remaining ones in each of the land districts. This was done in accordance with the requirements of the President's proclamation, and was a wise provision, as by it each applicant had the satisfaction of knowing that his name had been placed in the box of the district in which he desired to enter and had been drawn in its order.

The commission duly certified to the land officers at Elreno and Lawton the lists of 6,500 names for each land district drawn from the box, showing the order in which those whose names were drawn might make their homestead entries.

While the greatest interest was shown by the people in the first day's drawing, and a larger number were present that day than upon any subsequent day, a very large number of people remained at Elreno until the conclusion of the drawing of 6,500 names in each district. There was the same good order which had prevailed throughout the entire period of registration. No dissatisfaction was at any time expressed as to the plan of the drawing or the manner in which it was conducted, but, upon the contrary, both were very generally commended. Even those who met with disappointment in the drawing of numbers had no criticism to offer, but expressed themselves as satisfied that they had been treated with absolute fairness.

SALE OF TOWN SITES.

By your letter of July 19, 1901, I was instructed to take charge of and superintend, subject to the provisions of the act of March 3, 1901, and the regulations contained in said letter, the offering and sale of the town lots in the county-seat town sites of Lawton, Anadarko, and Hobart, in the respective and duly formed counties of Comanche, Caddo, and Kiowa, which instructions were supplemented by your telegram of July 26, 1901, relating to the appointment of commissioners.

Acting under these instructions, I appointed J. R. Hampton as commissioner for the sale of the town site of Lawton, C. F. Nesler as commissioner for the sale of the town site of Anadarko, and E. P. Holcombe as commissioner for the sale of the town site of Hobart, and designated the auctioneers and clerks who were to assist them. These commissioners gave the required bonds, which were approved by the Department, entered upon their duties, and began the sale of the town lots promptly at 9 o'clock of August 6 in each of the three town sites. The sales were continued from day to day without any special incidents worthy of note. There was no occasion to suspend the sales and no evidence of any combination among the bidders to suppress competition or prevent the sale of lots at a reasonable value, nor was there any disturbance among the bidders or those present which prevented the orderly progress of the sale. All lots purchased were immediately paid for in cash, and the money received therefor was transmitted by each commissioner, without delay, to the subtreasury at St. Louis. Every precaution was taken for the safekeeping of the money while in the possession of the commissioners. The greatest precaution taken to protect the money received from these sales was at Lawton.

When the sales began at this place, on the 6th of August, the nearest railroad station was Rush Springs, Inc. T., a distance of 30 miles, the road from Lawton to which place ran through an unsettled country. A military escort of 10 cavalrymen, in command of a sergeant, was provided by Major Scott, the commanding officer at Fort Sill, and as it was necessary to make this trip of 30 miles six times a week, it required two details upon the road all the time. Subsequently the Chicago, Rock Island and Pacific Railroad was completed to a point 12 miles north of Fort Sill, at which point an express office was established, after which the funds were taken to that point, and at the conclusion of the sale the road had been completed to Fort Sill.

A guard of cavalymen was also furnished each day for the protection of the money during the sale and during its transmission from Lawton to Fort Sill, where it was necessary that it should be kept overnight, which was also done under guard. The money paid for town lots at Lawton was under a military guard from the time it was paid to the commissioner until it was delivered to the express company. The same was true of the money received from the sale of lots at Anadarko, a detachment of cavalry being stationed at that place for the purpose of guarding the receipts of the sale of that town site.

There were no troops stationed at Hobart, the protection of the funds received there being provided by deputy United States marshals. The deputies furnished by the United States marshal also rendered very efficient services at Anadarko and Lawton, in conjunction with the military guard. There was no loss of funds of any kind at either of these town sites.

The sales progressed without interruption, every lot in each of the town sites being sold and paid for and the sales concluded within the time prescribed

by your instructions. The receipts from the sales of these town sites were as follows:

Town site.	Number of lots.	Total receipts.
Lawton	1,422	\$414,845
Anadarko	1,129	188,455
Hobart	1,308	132,733

making the total receipts from the sale of the three town sites \$736,033.

The expenses incurred in making the sales of these town sites are as follows:

Lawton	\$2,489.62
Anadarko	1,544.53
Hobart	<u>1,797.00</u>

Total 5,831.15

which is a little less than four-fifths of 1 per cent of the total receipts.

Under the authority of your telegram of August 3, 1901, these expenses, which included the pay of the commissioners, were paid from the receipts of the respective sales, and the net receipts only were deposited in the sub-treasury at St. Louis to your credit as trustee for the respective town sites. These amounts so deposited are, respectively, as follows:

Lawton:

Total receipts .	\$414,845.00
Total expenses	<u>2,489.62</u>

Amount deposited \$412,355.38

Anadarko:

Total receipts	188,455.00
Total expenses	<u>1,544.53</u>

Amount deposited 186,910.47

Hobart:

Total receipts 132,733.00

Total expenses 1,797.00

Amount deposited 130,936.00

Total amount deposited 730,201.85

It is provided in the act of March 3, 1901, that "the receipts from the sale of these lots in the respective county seats shall, after deducting the expense incident to the surveying, subdividing, platting, and selling of the same, be disposed of under the direction of the Secretary of the Interior, in the following manner," etc.

A statement has heretofore been submitted of the expenses incident to the surveying, subdividing, and platting of the town sites of Lawton, Anadarko, and Hobart. As these town sites embrace the same number of acres, and the expenses incident to their survey were practically the same in each case, no attempt has been made to keep an account with each town site, but the expenses incident to their survey are submitted in one account, with the suggestion that in my opinion they should be divided equally between the three town sites, one-third of the gross amount to be charged to each one.

These accounts have all been audited in the General Land Office and paid from the appropriations to which they are properly chargeable.

It appears that the entire amount of expenses so incurred and paid and which should now be deducted from the receipts of sales of said town lots on account of said expenses, and deposited to the credit of the Treasurer of the United States, is \$5,284.24, one-third of which is \$1,761.41, which amount it is recommended should be charged against the receipts from the sale of each town site.

If the distribution of expense of survey is made as herein suggested, the net balance to the credit of the town sites will be as follows:

Lawton:

Gross receipts	\$414,845.00
Less expense of survey	\$1,761.41
Less expense of sale	2,489.62
Total expense	<u>4,251.03</u>
Total net receipts	\$410,593.00

Anadarko:

Gross receipts	188,455.00
Less expense of survey	1,761.41
Less expense of sale	<u>1,514.53</u>
Total expense	<u>3,305.91</u>
Total net receipts	185,149.06

Hobart:

Gross receipts	132,733.00
Less expense of survey	1,761.41
Less expense of sale	<u>1,797.00</u>
Total expense	<u>3,558.41</u>

Total net receipts	<u>129,174.50</u>
Total net receipts from sale of three town sites	724,917.00

Great credit is due to the commissioners and those associated with them for the successful manner in which the sales of these town sites were conducted. At the beginning of the sales there were no buildings upon either of the town sites which could be used by the commissioners, and it was necessary that temporary platforms should be erected, upon which the sale were conducted. At Lawton a small building was also constructed, which was occupied by the commissioner and his clerks, while they occupied sleeping apartments and

boarded at Fort Sill. At Anadarko the commissioner and his assistants obtained board and lodging at the Indian agency, adjoining the town site, while at Hobart the commissioner and his assistants lived in a tent adjoining the platform upon which the sales were made.

While the time devoted to the sale of lots was from 9 a.m. until 4 p.m., it was necessary that the commissioners and their assistants should begin work much earlier than 9 o'clock, while the making up of their accounts and reports occupied their time for several hours after the sales were closed.

At each one of the town sites it was necessary that the money received from the day's sales should be retained by the commissioner over night, as the express company would not receive it until the following day. This necessitated a night guard upon the money, and was a constant source of care to the commissioners.

The sales were conducted to the entire satisfaction of those who participated in the purchase of lots, while the amounts received were larger than had been expected. The expenses incident to the survey and the sale were as small as the conditions under which they were made would permit, and the net receipts are sufficient to place each of the new counties upon a good financial basis.

THE ENTRIES.

In accordance with the President's proclamation, the land offices at Elreno and Lawton were duly opened for business upon the qualification of their respective registers and receivers. Prior to August 6, 1901, the business of these officers was principally confined to passing upon applications for reservations for town-site purposes, of which there were seven in the Elreno district and three in the Lawton

district which finally received your approval, and to receiving the additional entries of those entrymen having entries adjoining the ceded lands of less than 160 acres. While not so employed the local land officers of these districts were engaged upon the registration in progress at Fort Sill and Elreno, in which they rendered valuable assistance. Upon August 6, at 9 o'clock a.m., these officers were opened for the receipt of entries by those holding numbers entitling them to make homestead entries. Both at Lawton and Elreno buildings suitable for land-office purposes had been erected and furnished.

In addition to the usual supply of blanks, maps, and plats, each office was provided with a map of its district, drawn upon a scale sufficiently large to distinctly show each smallest legal subdivision of land. Each of these maps was in charge of an experienced land-office clerk, and was accessible to those desiring to make entries. As soon as made each entry was marked off upon the map, and thus it constantly showed the land open to entry in that district, which was of very great assistance to the entrymen. In addition to the regular clerks allowed the local land offices, several detailed clerks from the General Land Office were on duty in each of these offices. With this force no difficulty was experienced in receiving and recording the 125 entries per day provided by the proclamation. Those holding low numbers entitling them to make early entries, generally selected land contiguous to some one of the town sites, preference being given to those designated as county seats. Upon the land adjoining these town sites, and especially at Lawton, large numbers of people had congregated prior to the day of opening. This unwarranted occupation was not brought to my attention until August 5. As the entries were to begin at 9 o'clock a.m., of August 6, and these occupied lands would be the

first applied for, immediate action was necessary. I therefore prepared the following order to the register and receiver of the Lawton office, a copy of which was also filed in the Elreno office.

"The occupation of the south half of section 31, township 2 north, range 11 west, or any other portion of the unreserved lands in your district, by any person for purposes of residence, trade, or business, except after having made a legal entry of the same, is in violation of law and the President's proclamation, and gives such persons no rights whatever. You will allow homestead entries of said lands by qualified entrymen, notwithstanding any such occupation. Acknowledge receipt."

A copy of this message was filed in the telegraph office, and another mailed, but as both these means of communication were very uncertain owing to the great pressure of business, another copy was intrusted to a clerk going to Lawton by way of Rush Springs, while a fourth copy was given a clerk going to Anadarko, who placed it in the hands of an Indian courier, who left that place at midnight and made the ride of 40 miles to Lawton before 9 o'clock of August 6. The first two entries made at the Lawton office were for the half section of land mentioned in this order. Several attempts have been made to contest one of these entries upon grounds covered by this order, but all have failed.

The entries at the land offices continued without interruption throughout the prescribed period of sixty days. The numbers of those entitled to make entry each day were called in their order. Anyone failing to respond was passed until after the other applications assigned for that day had been disposed of, when he was again called both by name and number, and if he still failed to appear he was held to have abandoned his right to make entry under the drawing.

In accordance with your telegraphic regulations of August 5, appeals from the action of the local land officers at Elreno and Lawton rejecting applications to make or amend entries could only be taken within one day, Sundays excepted, after such rejection. When such appeals were taken, the papers were immediately forwarded to the General Land Office, where they were at once carefully examined and forwarded to you, with appropriate recommendation, when the cases would be promptly decided and closed.

Applications to contest entries made during this sixty-day period were treated in the same manner.

This course provided an adequate and speedy method of correcting any material errors in the local offices, and it is believed that at the same time it tended to discourage groundless appeals and contests. While there were quite a number of applications to contest entries sent up from each of the local offices, such contests were allowed and hearings ordered in but a comparatively small number of cases in each office. Hearings were ordered only in cases where it was shown beyond a reasonable doubt that the entryman was disqualified at the time of making entry, which fact he had concealed from the land officers, or in some other manner had made what might be termed a fraudulent or illegal entry.

During the entire period occupied in opening these ceded lands to settlement and entry suits at law were in progress calculated to prevent such opening in whole or in part. Of those brought in Oklahoma, the suits in equity brought by Lone Wolfe and others in the district court of Canadian County Okla., asking that the Government be restrained from disposing of said ceded lands were, prior to August 6, 1901, decided in favor of the Government. Subsequent to August 6 temporary restraining orders, granted by the probate judge of

Canadian County, Okla., against the disposal of certain described tracts on the application of Rebecca Young and other alleged Indians, were modified by the district judge of Canadian County, permitting the disposition of said lands, subject to the rights, if any, of the said alleged Indians.

Restraining orders were issued by the probate judge of Canadian County, Okla., on the application of William H. Brintle and ten other alleged settlers on the western boundary of the Wichita Reservation. The two suits last above mentioned have not been disposed of, but the Attorney-General has directed the United States attorney for the district of Oklahoma to appear for the Government in said cases.

The suits of Lone Wolf and others did not in any wise interfere with the registration, drawing, or disposition of said lands. Those of Rebecca Young and others temporarily prevented the disposition of a small number of tracts, and those of Brintle and others affected less than a dozen claims, and were not filed until near the close of the sixty-day period.

While an itemized statement of the expenses incident to the registration, drawing, and making entries under the proclamation can not be prepared until full reports have been received from the local land officers at Lawton and Elreno, a very close estimate of the same can be made, as follows:

Salaries and per diem of W.A. Richards	
and 33 detailed clerks during the	
time engaged in registration, drawing,	
and making entries (estimated)	\$8,271
Railroad fare and necessary traveling	
expenses of same from Washington,	
D.C., to Oklahoma and return	3,100
Incidental expenses of registration and	
drawing, as shown by advances made	
to the local officers	5,920

Salaries of registers and receivers for two months	2,000
Salaries of 10 local land office clerks for two months	1,500
Total	20,791

In addition to other fees of which no account is now available, the land offices at Lawton and Elreno received as fees upon the 11,638 homestead entries made during the sixty-day period the sum of \$162,932, which sum will be deposited in the Treasury. Deducting from this sum the amount of expenses as estimated, a balance of \$142,141 is left to the credit of the Government upon this account. This is a net sum accruing to the Government in the transaction of the business of opening these ceded lands to settlement and entry.

As showing the financial working of the plan prescribed by the proclamation, it is proper to take into account the net receipts from the sale of the three county-seat town sites, although they will be devoted to public improvements in the respective counties. The net receipts from the town-site sales were \$724,917, which, added to \$142,141, the net receipts of the homestead entries, makes a total of \$867,058 as the net receipts from the opening of these lands up to October 4, 1901, the end of the sixty-day period fixed by the proclamation.

During the first days of making entries there were very few who failed to appear and make entry when their names were called. As the entries progressed, however, and good claims became more difficult to find, the proportion of those failing to appear increased. This was not entirely due to a failure to find a desirable piece of land, but partly to the fact that many holding a high number and living at a distance from the land district abandoned the idea of making an entry without visiting the district and

making an effort to find an acceptable claim. A few were prevented by sickness from making entry, and several deaths were reported of those holding numbers entitling them to make entry. The entries under the proclamation were concluded at each of the land offices upon October 4, 1901.

At the Lawton office 5,895 entries were made, including soldiers' declaratory statements filed, and 605 either failed to appear or were found to be disqualified.

At the Elreno office 5,743 entries were made, including soldiers' declaratory statements filed, and 757 either failed to appear or were found to be disqualified.

There were filed at the Lawton office 243 soldiers' declaratory statements, and 275 such filings were made at the Elreno office. There were 346 women who made entries at the Lawton office and 424 women who made entries at the Elreno office.

During the sixty days prescribed by the proclamation 11,638 filings were made, of which 518 were soldiers' declaratory statements and 770 were made by women, while 1,362 holding numbers entitling them to make entries failed to do so.

The period during which these ceded lands could only be taken in accordance with the President's proclamation ended up October 4, and reports since received from the Lawton and Elreno land offices are to the effect that the lands remaining open to entry by reason of failure to make entry of some who were entitled to do so are being rapidly settled upon and entered under the general homestead laws, without confusion or disorder.

In the foregoing statements I have endeavored to report everything of importance pertaining to the action taken under your direction in disposing of these ceded Indian lands, in accordance with the acts of Congress pertaining thereto and the Presi-

dent's proclamation. It is believed that the intent and purpose of those acts and of the proclamation have been fully carried out. There has been no complaint of discrimination or unfairness, and there were but little of the hardships and suffering usually encountered in the settlement of a new country. Without strife or contention, but in a quiet, peaceful, and orderly manner, these lands have passed from the condition of an Indian reservation to that of a populous, thrifty, peaceable agricultural community.

Very respectfully, W. A. RICHARDS,
Assistant Commissioner.

DEPARTMENT OF THE INTERIOR,

Washington, October 11, 1901.

HON. W. A. RICHARDS,
Assistant Commissioner of the General Land Office.

DEAR SIR: I am in receipt of your report dated the 9th instant, respecting the opening to settlement and entry of the Kiowa, Comanche, Apache, and Wichita lands, situated in the Territory of Oklahoma, and ceded to the United States under agreements respectively ratified by the acts of March 2, 1895, and June 6, 1900.

I have read your report with care and the greatest satisfaction, and beg to cordially thank you and every member of your staff for the very thorough, economical, and successful manner in which you, with their assistance, conducted and completed the somewhat unusual, extremely laborious work, and for the systematic, business-like method in which you discharged the duties imposed upon you by the Department, you having made a record which, I trust, will be accepted as a precedent for all future openings of the public domain.

The quiet and orderly manner in which the opening was accomplished is most gratifying, especially when contrasted with the utter disregard of law and order, the outrages, and the contests which characterized the former openings on the "sooner" plan, and the spectacle of 151,000 disappointed applicants quietly retiring in favor of the 13,000 successful ones is a characteristic demonstration of the willingness of the American people to respect and obey the law when its enforcement is accomplished by such rules and regulations as to provide an absolute equality of opportunity to all, as was the case in the opening which you have conducted with so much credit as to have also secured the unqualified approval of all who were interested therein.

Again thanking you and your assistants, I remain,
 Yours, most respectfully,
 E. A. HITCHCOCK, *Secretary.*

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

OFFICE OF THE ASSISTANT COMMISSIONER,

Washington, D.C., October 16, 1901.

HON. E. H. HITCHCOCK,
Secretary of the Interior, Washington, D.C.

DEAR SIR: I have the honor to acknowledge the receipt of your letter of the 11th instant relating to my report respecting the opening to settlement and entry of the lands of Oklahoma ceded by the Kiowa, Comanche, Apache, and Wichita tribes of Indians.

It is a matter of great satisfaction to me to be so cordially assured that my efforts to carry out your plans and instructions are so highly appreciated and the results obtained meet with your approval. While I and those associated with me put forth our best endeavors, the success which was achieved is in a large measure due to the perfection of the plans and to the hearty support and excellent advice received from you.

I fully appreciate the trust and confidence shown in giving me such great latitude in this work, and prize your letter more highly because it assures me that you were not disappointed.

Thanking you for your kindly consideration and expressions of approval, I remain,

Very respectfully, yours, W. A. RICHARDS,
Assistant Commissioner.

Mr. STEWART. Mr. President, since the motion to recommit was made there have been other proceedings in the Senate, and I inquire if it is now in order to renew my motion to recommit the bill?

The PRESIDENT pro tempore. The bill is now in the Senate, and a motion to recommit is in order.

Mr. STEWART. Then I move to recommit the bill to the Committee on Indian Affairs, and I ask for the yeas and nays on that motion.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. CULBERSON (when his name was called). I have a general pair with the junior Senator from Wisconsin [Mr. QUARLES]. I do not see him present in the Chamber, and therefore I withhold my vote.

Mr. HEITFELD (when the name of Mr. DUBOIS was called). My colleague [Mr. DUBOIS] is temporarily absent. If he were present, he would vote "nay."

Mr. KEAN (when his name was called). I am paired on this question with the junior Senator from Utah [Mr. KEARNS]. If he were present, I should vote "yea."

Mr. McCUMBER (When his name was called). I have a general pair with the junior Senator from Louisiana [Mr. Foster], and therefore refrain from voting.

Mr. CLAPP (when Mr. NELSON'S name was called). My colleague [Mr. NELSON] is necessarily absent. He is paired with the Senator from Missouri [Mr. VEST].

Mr. PROCTOR (when his name was called). I am paired with the Senator from Florida [Mr. MALLORY], and therefore withhold my vote.

Mr. QUARLES (when his name was called). I have a general pair with the senior Senator from Texas [Mr. CULBERSON]. If he were here, I should vote "yea."

Mr. RAWLINS (when his named was called). I have a general pair with the Senator from Ohio [Mr. HANNA]. If he were present, I should vote "nay."

Mr. SPOONER (when his name was called). I have a general pair with the Senator from Tennessee [Mr. CARMACK], who is not present, and I do not know how he would vote if here. If I were at liberty to vote, I should vote "nay."

Mr. VEST (when his name was called). I inquire whether the Senator from Minnesota [Mr. NELSON] has voted?

The PRESIDENT pro tempore. The Chair is informed that he has not voted.

Mr. VEST. Then I withhold my vote, as I am paired with that Senator. If at liberty to vote, I should vote "nay."

The roll call was concluded.

Mr. BAILEY (after having voted in the affirmative). I desire to inquire if the Senator from West Virginia [Mr. ELKINS] has voted?

The PRESIDENT pro tempore. The Chair is informed that he has not voted.

Mr. BAILEY. As I have a general pair with that Senator, I will withdraw my vote.

Mr. RAWLINS. I am informed that the senior Senator from Ohio [Mr. HANNA], with whom I am paired, would vote "nay" if present. I therefore take the liberty of voting, and vote "nay."

Mr. CLAPP (after having voted in the negative). In view of the fact that the Senator from North Carolina [Mr. SIMMONS], with whom I am paired, is absent, I will withdraw my vote.

The results was announced—yeas 12, nays 35; as follows:

YEAS—12		
Clay,	Jones, Ark.	Platt, Conn.
Cockrell,	Lodge,	Stewart,
Dryden,	Morgan,	Tillman
Hoar	Pettus,	Wetmore.
NAYS—35		
Allison	Dietrich,	McComas,
Bacon,	Dolliver,	McMillan,
Bate,	Fairbanks,	Millard,
Beveridge,	Foraker,	Money,
Blackburn,	Frye,	Patterson,
Burnham,	Gallinger,	Perkins,
Burrows,	Gamble,	Platt, N.Y.
Burton,	Gibson,	Rawlins,
Clark, Mont.	Hansbrough,	Teller,
Clark, Wyo.	Harris,	Turner,
Cullom,	Heitfeld,	Warren.
Deboe,	Kittredge,	
NOT VOTING—41		
Aldrich,	Foster, Wash.	Mitchell,
Bailey,	Hale,	Nelson,
Bard,	Hanna,	Penrose,
Berry,	Hawley,	Pritchard,
Carmack,	Jones, Nev.	Proctor,
Clapp,	Kean,	Quarles,
Culberson,	Kearns,	Quay,
Daniel,	McCumber	Scott,
Depew,	McEnery,	Simmons,
Dillingham	McLaurin, Miss.	Simon,
Dubois,	McLaurin, S.C.	Spooner,
Elkins,	Mallory,	Taliaferro,
Foster, La.	Martin	Vest,
	Mason,	Wellington.

So the motion to recommit was rejected.

The PRESIDENT pro tempore. The question is, Shall the bill pass?

The bill was passed.

[35 Cong. Rec. 5198 (1902)]

SENATE BILLS REFERRED.

* * *

S. 2992. An act to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect—to the Committee on Indian Affairs.

[35 Cong. Rec. 5613-5614 (1902)]

Mr. BURKE of South Dakota, from the Committee on Indian Affairs, to which was referred the bill of the Senate (S. 2992) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, reported the same with amendment, accompanied by a report (No. 2099); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

[#5A]

[S. Rep. No. 662, 57th Cong., 1st Sess. 1-6 (1902)]
(Senate Report to accompany S. 2992.)

Report No. 662

RATIFYING AGREEMENT WITH INDIANS
OF THE ROSEBUD RESERVATION, S. DAK.

March 7, 1902.—Ordered to be printed.

Mr. GAMBLE, from the Committee on Indian Affairs,
submitted the following

REPORT.

[To accompany S. 2992.]

The Committee on Indian Affairs, whom was referred the bill (S. 1992) ratifying an agreement with the Sioux Tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, having had the same under advisement, make the following report and recommend that the bill do pass with the following amendments:

Insert after the word "missions," line 18, section 3, the following: "and lands reserved for common schools as provided in section 4 of this act."

Add the following as an additional section to said bill:

SEC. 4. That sections 16 and 36 of the lands hereby acquired in each township shall not be

subject to entry, but shall be reserved for the use of the common schools, and the same are hereby granted to the State of South Dakota for such purpose; and in case either of said sections, or parts thereof, of the lands in said county of Gregory is lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians now holding the same, or otherwise, the governor of said state, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied in quantity equal to the loss, and such selection shall be made prior to the opening of such lands to settlement.

Your committee relieves the provision of the agreement proposed to be ratified are just and equitable, both as regards the United States as well as the Indians. The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There are 452 Indians holding allotments in the county, aggregating 104,999 acres. The price proposed to be paid for the lands to be ceded is \$2.50 per acre, making the amount to be paid for the cession \$1,040,000.

Two hundred and fifty thousand dollars of this amount is to be expended in the purchase of stock cattle for the benefit of the Indians, and the balance is to be paid per capita in cash in five equal annual allotments.

The subject of the proposed agreement has been under consideration for some time, and a bill authorizing the negotiation of the same was favorably reported from the Committee on Indian Affairs in the House in the last Congress.

The lands now open to settlement within the limits of Gregory County are limited in area. In the year 1898 the

county government was organized. Although all of the lands open to the settlement are occupied, the territory is so limited and the population so few in number the burdens of local government are too onerous to be borne with advantage to the community. The people are anxious that this particular part of the reservation be opened and opportunity given for settlement and development of the region of the State. It would add a larger population, increase the wealth and production, and relieve the burdens of necessary and legitimate taxation.

To open the lands to settlement would be carrying out the policy of the Government in this particular and in harmony with treaty stipulations and the provisions of the law of 1889 in the opening of the Great Sioux Reservation. The Indians on this reservation have taken their allotments, and the lands proposed to be opened by this bill are not used and are unnecessary to the support and maintenance of the tribe. In addition to this tract they have a large body of land still unallotted. By opening the lands covered by the agreement to occupation and development it would inure to the benefit of the Government, the State, and the Indians themselves. The consideration received by the Indians on account of the cession should put them in position to be more self-sustaining, and be helpful to their better condition and development.

The provisions of the bill in regard to opening the lands to free homesteads is in line with the declared policy of the Government as expressed in the act of May 17, 1900. The amendment proposed by your committee in regard to the reservation of sections 16 and 36 in each township for the support of the common schools is in the usual form, and in conformity to the action of Congress in like cases, and as provided by the Act of Congress admitting the State of South Dakota into the Union.

The committee submits, as a part of its report, the communication of the Secretary of the Interior, the Commissioner of Indian Affairs, and the Commissioner of the General Land Office, covering the subject in question.

DEPARTMENT OF THE INTERIOR,
Washington, December 6, 1901.

SIR: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated the 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S.D., providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office, ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

The PRESIDENT PRO TEMPORE, UNITED STATES
SENATE

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 23, 1901.

SIR: The office has the honor to acknowledge the receipt of a letter dated October 11, 1901, from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated

October 5, 1901, with which he inclosed an agreement dated September 14, 1901, with the Indians of the Rosebud Reservation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to that end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the lands opened up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 19, 1901, a draft of instructions was prepared by this office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the Department on

March 21, 1901, and Inspector McLaughlin detailed for the duty of conducting negotiations.

In his report dated October 5, 1901, the inspector states that he arrived at the Rosebud Agency on April 2, 1901, for the purpose of entering upon negotiations with the Indians, and that upon his arrival it was ascertained that smallpox was prevalent on the reservation, wherefore he deemed it inadvisable to assemble the Indians in general council. He states, however, that he made a trip to the Ponca Creek district, which is in Gregory County, about 100 miles east of the agency, for the purpose of conferring with the Indians there who would be the most affected by the cession, and for the purpose of traveling over that portion of the reserve and securing a knowledge of the lands whose cession it was proposed to secure.

Negotiations having been postponed at that time, with the approval of the Department, the inspector states that he proceeded to carry out orders elsewhere, and returned to the Rosebud Agency on August 18 last, and at once entered upon negotiations which, though somewhat protracted and at times discouraging, he says have been satisfactorily concluded.

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians ceded to the United States all that portion of their reservation not allotted situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 37 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that 250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging to the reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right to residence thereon not inconsistent with existing statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provision of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated September 14, 1901, and contains the signatures of James McLaughlin, United States Indian inspector, and of 1,031 male adult Indians

of the Reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement to the effect that the provisions thereof are fully explained by them to the Indians in open council, that it was fully understood by them before signing, and that signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Another certificate is attached to the agreement, dated October 4, 1901, by Frank Mulle, agency clerk, and by C.H. Bennett, John Sullivan, Frank Robinson, Frank Sypal, Isaac Bettelyoun, and James A. McCorkle, farmers of the several districts of the reservation, and Louis Bordeaux, ex-farmer of the agency district, to the effect they they witnessed the signatures of the United States Indian Inspector McLaughlin and of the 1,031 Indians of the Rosebud Agency to the agreement.

A certificate dated October 4, by the United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being twelve more than three-fourths of the male adult population of the reservation.

Respecting the terms of the cession, Inspector McLaughlin states in his report that he was greatly handicapped in the beginning by the fact that most of the Indians who favored a cession at all held the lands at an enormous price—from \$7 to \$15 per acre; that only a very few expressed their willingness to accept as low as \$5 per acre, and this in cash and all in one payment; that upon his arrival all the white men connected with the agency, as well as those of the surrounding country with whom he talked, held the lands in question as worth \$5

per acre; that it appeared that adjacent lands in Gregory County and in Hoyt County, Nebr., were selling at from \$5 to \$10 per acre; that a syndicate of cattlemen in Sioux City, Iowa, expressed its willingness to pay \$5 per acre for the entire tract, and that these current rumors and fictitious values placed upon the lands which were circulated among the Indians exercised them very much and had to be overcome by reasoning, which required time and a great amount of patience.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that while he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased, whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached.

The inspector refers to the minutes of the council proceedings transmitted with his report as showing the numerous questions raised by the Indians and his answers to their contentions; also, as showing that he finally convinced a number of the leading men of the wisdom of cooperating with him in formulating an agreement.

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land, and the greater portion is

also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He said he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek Day School, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 389.67 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years will aid the Indians materially in providing for their family needs during that time, after which the matured cattle, the increase from the stock issue to them, will be marketable and will with proper care give them an annual revenue thereafter. The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservations on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indian accept such provision, but to no purpose, they maintaining that those in need of dams could construct

the same themselves and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could not be made. The Indians insisted for a long time upon having the entire \$790,000 paid to them in case in one payment; but the inspector says he finally succeeded in getting their consent to its payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

The inspector transmits with his report a map, prepared by Special Allotting Agent W. A. Winder, of the portion of the reservation proposed to be ceded, which shows the several Indian allotments therein, with the names of the allottees, and also the unallotted portions; also a package of correspondence had with the State authorities of South Dakota relative to the boundaries of Gregory County, and the description of the eastern portion of the reservation.

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement.

The agreement appears to be properly executed and inform for acceptance and ratification by Congress. It is deemed proper in this connection to refer especially to the provisions of article 4, which are evidently intended to fix the status of mixed-blood Indians upon that

reservation, and to insure the undisturbed residence thereon of white men intermarried with the Indians. It does not appear that this provision extends to mixed-bloods as a class any rights or benefits that they did not have before, unless possibly to secure rights to children born of a marriage since the enactment of the provision contained in the Indian Appropriation act of June 7, 1897 (30 Stat., P. 62), which reads as follows:

"That all children born of a marriage heretofore solemnized between a white man and Indian woman by blood and not by adoption, where said Indian woman is at this time, or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior act of Congress shall be construed as to bar such child of such right."

Respecting the residence of white men intermarried with Indian women, it may be proper to state that this right has always been extended in such cases and permitted so long as the conduct of such white men on the reservation is not detrimental to the peace and welfare of the Indians. The office sees no serious objection to the embodiment of this article in the agreement.

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this office and from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript of council proceedings that the Indians would not

consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the amount necessary to carry the provisions of article 2 and 3 of the agreement into effect.

The matter of the disposition of the land ceded is one properly for the Department and the Commissioner of the General Land Office to arrange. It is suggested that such disposition may be provided by the addition of another section to the draft of the bill inclosed. In this connection it is suggested that the section added should provide for the disposition of the lands ceded, "excepting such tracts as may be reserved by the President, not exceeding 398.67 acres in all, for the subissue station, Indian day school, one Catholic mission, and two Congregational missions."

Besides the draft of the bill in duplicate, there are transmitted herewith two copies of the agreement, two copies of the council proceedings, two copies of correspondence had by Inspector McLaughlin with the State authorities of South Dakota respecting the boundaries of Gregory County, two blue prints of map, and two copies of this report, with the recommendation that one copy of each be transmitted to the Senate and House of Representatives, respectively, with request for favorable action on the agreement.

The original agreement and papers accompanying the same are transmitted herewith, with the request that they be returned to the files of this office when the same shall have served their purpose.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner.*

THE SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 3, 1901.

SIR: I have the honor to acknowledge the receipt, by reference from you, of a report from the Commissioner of Indian Affairs, dated 23d ultimo, and accompanying draft of a bill to ratify an agreement thereto attached, dated September 14, 1901, with the Indians of the Rosebud Reservation, S. Dak., providing for the cession of the unallotted portion of their lands in Gregory County, S. Dak. You direct this office to add another section to the draft of the bill, providing for the disposal of the lands, and to report in triplicate.

In reply I have to state that, in view of the provisions of the "free homestead" act of May 17, 1900 (31 Stat., 179), and of the act of March 3, 1901 (31 Stat., 1093), providing for the disposal of lands recently opened to settlement and entry in Oklahoma, noting the reservations recommended by the Commissioner of Indian Affairs, and considering the price to be paid by the Government to the Indians for the lands acquired, I respectfully recommend that there be added to said bill the following section:

"SEC. 3. That the lands ceded to the United States under said agreement, excepting such tracts as may be reserved by the President, not exceeding three hundred and ninety-eight and sixty-seven one-hundredths acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions, shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make

entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridges: *And provided further*, That the price of said lands shall be two dollars and fifty cents per acre, but settlers under the homestead law, who shall reside upon and cultivate the land entered in good faith for the period required by existing law, shall be entitled to a patent for the lands so entered upon the payment to the local land officers of the usual fee and commissions, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry, except that the homestead settlers who commute their entries under section twenty-three hundred and one, Revised Statutes, shall pay for the land entered the price fixed herein."

Very respectfully,

BINGER HERMANN, *Commissioner*.

The SECRETARY OF THE INTERIOR.

[#5B]

(House of Representatives Report to accompany S. 2992)

[H. R. Report No. 2099, 57th Cong., 1st Sess. 1-4 (1902)]

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION, S. DAK.

MAY 17, 1902.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. BURKE, of South Dakota, from the Committee on Indians Affairs, submitted the following

REPORT.

[To accompany S. 2992.]

The Committee on Indian Affairs, to whom was referred the bill (S. 2992) ratifying an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, having had the same under consideration, recommend that the bill be amended by striking out all after the enacting clause and inserting the bill H. R. 9057 as reported to the House (Report No. 954).

The effect of this amendment is simply to substitute the House bill for the Senate bill, the only material difference in the bills being that the Senate bill contains a provision for "free homesteads," strikes out the clause relating to commutation, and has a provision (section 4)

providing that section 16 and 36 of the lands in each township shall not be subject to entry, but shall be reserved as school lands and granted the State of South Dakota. The opinion of the committee is that this section is not necessary, as under existing laws sections 16 and 36 would be granted to the State upon the extinguishment of the Indian title. Report of the committee (No. 954) on House Bill 9057 adopted as a substitute for the Senate bill, as before stated, is herewith submitted, as follows:

"The purpose of the bill is to ratify an agreement made with the Rosebud tribe of Indians in South Dakota by Indian Inspector James McLaughlin, dated September 14, 1901, providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., and opening the land to settlement entry under the homestead and town-site laws.

The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There is 452 Indians holding allotments in the county, aggregating 104,999 acres. The price proposed to be paid for the lands to be ceded is \$2.50 per acre, making the amount to be paid for the cession \$1,040,000.

Two hundred and fifty thousand dollars of this amount is to be expended in the purchase of stock cattle for the benefit of the Indians, and the balance is to be paid per capita in cash in five equal annual installments.

The committee have amended the bill, striking out the provision relative to "free homesteads," thereby proposing to open the land to settlement under the homestead and town-site laws, and requiring the settlers to pay for the land at \$2.50 per acre, thus reimbursing the Government for the amount paid to the Indians.

As to the character of the lands proposed to be ceded and opened to settlement, and the benefits to be derived by the Indians by the sale of this portion of their reservation, the committee submits as part of its report a portion of the letter of the honorable Commissioner of Indian Affairs to the honorable Secretary of the Interior, under date of November 23, 1901, as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 23, 1901.

SIR: The office has the honor to acknowledge the receipt of a letter dated October 11, 1901, from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement dated September 14, 1901, with the Indians of the Rosebud Reservation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to the end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the lands open up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 19, 1901, a draft of instructions was prepared by this office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the Department on March 21, 1901, and Inspector McLaughlin detailed for the duty of conducting negotiations.

* * * * *

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 73 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among them men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existing statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated September 14, 1901 and contains the signature of James McLaughlin, United States Indian Inspector, and of 1,031 male adult Indians

of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement to the effect that the provisions thereof were fully explained by them to the Indians in open council, that is was fully understood by them before signing, and that the signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

* * * * *

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three-fourths of the male adult population of the reservation.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that while he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased; whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached.* * *

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments

embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land and the greater portion is also good agricultural land upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in Gregory County is 521, 050.24 acres, of which 104, 909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, or \$1,050,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek Day School, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres respectively, for the Congregational Mission—a total of 398.67 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit of the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years will aid the Indians materially in providing for their family needs during that time, after which the matured cattle, the increase from the stock issue to them, will be marketable and will with proper care give them an annual revenue thereafter. The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent

McChesney endeavored by sound reasoning to have the Indians accept such provision, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they receive as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could not be made. The Indians insisted for a long time upon having the entire \$790,000 paid to them in cash in one payment; but the inspector says he finally succeeded in getting their consent to its payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

* * * * *

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement. * * *

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this office and from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript

of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the amount necessary to carry the provisions of article 2 and 3 of the agreement into effect. * * *

W. A. JONES, *Commissioner.*

The SECRETARY OF THE INTERIOR.

The bill has the approval of the Department, as will appear by letter dated December 6, 1901, from the honorable Secretary of the Interior, which letter is as follows:

DEPARTMENT OF THE INTERIOR,

Washington, December 6, 1901.

SIR: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office, ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable, and the terms the best that could be

obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

The PRESIDENT PRO TEMPORE UNITED STATES
SENATE.

[#6]

(Legislative history of H.R. 9057, 57th Cong., 1st Sess. (1902); the House of Representative companion bill to S. 2992, a bill to ratify agreement with Sioux Indians for cession of certain lands of the Rosebud Reservation.)

[35 Cong. Rec. 377 (1901-1902)]

Rosebud Reservation: bills to ratify agreement with Indians on (see bills S. 2992; H.R. 9057).

[35 Cong. Rec. 412 (1901-1902)]

H. R. 9057— To ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect.

Mr. Burke of South Dakota: Committee on Indian Affairs 680.—Reported back with amendment (H. R. REPORT 954) 2814.

[35 Cong. Rec. 680 (1902)]

By Mr. BURKE of South Dakota: A bill (N. R. 9057) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect—to the Committee on Indian Affairs.

[35 Cong. Rec. 2814 (1902)]

Mr. BURKE of South Dakota, from the Committee on Indian Affairs, to which was referred the Bill of the House (H. R. 9057) to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, reported the same with amendments, accompanied by a report (No. 954); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

[#6A]

(House of Representative Report to accompany H. R. 9057)

[H. R. Rep. No. 954, 57th Cong, 1st Sess. 1-4 (1902)]

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION, S. DAK.

MARCH 14, 1902.— Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BURKE, of South Dakota, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H. R. 9057.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 9057) ratifying an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation to carry the same into effect, having had the same under consideration, submit the following report and recommend that the bill do pass with the following amendments:

In section 3, page 6, strike out all lines 17, 18, 19, 20, 21, 22, 23, and words "his entry" in line 24.

In line 24 strike out the word "who" and insert "may."

In line 26 strike out the words "shall pay for" and insert the words "by paying for."

The purpose of the bill is to ratify an agreement made with the Rosebud tribe of Indians in South Dakota by Indian Inspector James McLaughlin, dated September 14, 1901, providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., and opening the land to settlement and entry under the homestead and town-site laws.

The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There are 452 Indians holding allotments in the county, aggregating 104,999 acres. The price proposed to be paid for the lands to be ceded is \$2.50 per acre, making the amount to be paid for the cession \$1,040,000.

Two hundred and fifty thousand dollars of this amount is to be expended in the purchase of stock cattle for the benefit of the Indians, and the balance is to be paid per capita in cash in five equal annual installments.

The committee have amended the bill, striking out the provision relative to "free homesteads," thereby proposing to open the land to settlement under the homestead and town-site laws, and requiring the settlers to pay for the land at \$2.50 per acre, thus reimbursing the Government for the amount paid to the Indians.

As to the character of the lands proposed to be ceded and opened to settlement, and the benefits to be derived by the Indians by the sale of this portion of their reservation, the committee submits as a part of its report a portion of the letter of the honorable Commissioner of Indian Affairs to the honorable Secretary of the Interior, under date of November 23, 1901, as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 23, 1901.

SIR: The office has the honor to acknowledge the receipt of a letter dated October 11, 1901, from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement dated September 14, 1901, with the Indians of the Rosebud Reservation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the office, after consideration, finds no objection to the approval of said agreement, proper report to be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to that end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the lands open up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the country to maintain the county organization.

The office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was

authorized, in his discretion, to negotiate through a United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 19, 1901, a draft of instructions was prepared by this office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the Department in March 21, 1901, and Inspector McLaughlin detailed for the for the duty of conducting negotiations.

* * * * *

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 73 and 74 west, and also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed by articles 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existing statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated September 14, 1901, and contains the signatures of James McLaughlin, United States Indian Inspector, and of 1,031 male adult Indians of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement to the effect that the provisions thereof were fully explained by them to the Indians in open council, that it was fully understood by them before signing, and that the signatures, though the names are similar in some

cases, represent different individuals in each instance, as indicated by their respective ages.

* * * * *

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three-fourths of the male adult population of the reservation.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that while he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased; whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached. * * *

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land and the greater portion is also good agricultural land upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report the area of the portion of the Rosebud Reservation embraced in Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was states in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek Day School, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 398.67 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the case payment for five years will aid the Indians materially in providing for their family needs during that time, after which the matured cattle, the increase from the stock issued to them, will be marketable and will with proper care give them an annual revenue thereafter. The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indians accept such provisions, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could

not be made. The Indians insisted for a long time upon having the entire \$790,000 paid to them in cash in one payment; but the inspector says he finally succeeded in getting their consent to its payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

* * * * *

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement. * * *

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this office and from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the amount

necessary to carry the provisions of articles 2 and 3 of the agreement into effect. * * *

W. A. JONES, *Commissioner.*

The SECRETARY OF THE INTERIOR.

The bill has the approval of the Department, as will appear by letter dated December 6, 1901, from the honorable Secretary of the Interior, which letter is as follows:

DEPARTMENT OF THE INTERIOR,

Washington, December 6, 1901.

SIR: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated the 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the United States of the unallotted portions of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commission of the General Land Office, ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully

E. A. HITCHCOCK,

Secretary.

The PRESIDENT PRO TEMPORE UNITED STATES SENATE.

[#7]

(Legislative history of S. Doc. 31, 57th Cong. 1st. Sess.—A letter of the Secretary of the Interior transmitting agreement with Sioux Indians providing for the cession to the U.S. of a portion of the Rosebud Reservation.)

[35 Cong. Rec. 377 (1901-1902)]

*Rosebud Reservation: * * **

letter of Secretary of Interior transmitting agreement with Indians on (S. Doc. 31) 206, 245, 1279.

[35 Cong. Rec. 245 (1901)]

A letter from the Secretary of the Interior, transmitting a copy of the report of the Commissioner of Indian Affairs, with copy of an agreement with the Rosebud Indians and the draft of a bill—to the Committee on Indian Affairs, and ordered to be printed.

[35 Cong. Rec. 206 (1901)]

INDIAN LANDS IN GREGORY
COUNTY. S. DAK.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Interior, transmitting a report from the Commissioner of Indian Affairs, together with an agreement, dated September 14, 1901, between United States Indian Inspector James

McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for a cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., together with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office ratifying the agreement; which, with the accompanying papers, was referred to the Committee on Indian Affairs, and ordered to be printed.

[35 Cong. Rec. 1279 (1902)]

AGREEMENT WITH INDIANS OF ROSEBUD
AGENCY, S. DAK.

Mr. GAMBLE. Senate Document No. 31, Fifty-seventh Congress, first session, being a letter from the Secretary of the Interior transmitting the report of the Commissioner of Indian Affairs upon a certain agreement with Indians of the Rosebud Agency, S. Dak., was submitted December 9, 1901, and ordered to be printed and lie on the table. A bill is now pending in the Senate for the ratification of that treaty, and it is before the Committee on Indian Affairs. I move that that report be referred to the Committee on Indian Affairs.

The motion was agreed to.

[#7A]

[S. Doc. No. 31, 57th Cong. 1st Sess. 1-43 (1901)]

(Copy of agreement of Sept 14, 1901 between U.S. Indian Inspector J. McLaughlin & the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the U.S. of a portion of said reservation.)

AGREEMENT WITH THE INDIANS OF
ROSEBUD AGENCY, S. DAK.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

THE REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS ACCOMPANYING COPY OF AN AGREEMENT, DATED SEPTEMBER 14, 1901, BETWEEN UNITED STATES INDIAN INSPECTOR JAMES McLAUGHLIN AND THE INDIANS OF THE ROSEBUD RESERVATION, S. DAK.

DECEMBER 9, 1901.—Ordered to be printed and lie on the table.

DEPARTMENT OF THE INTERIOR,

Washington, December 6, 1901.

SIR: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian affairs, dated 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession of the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office, ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully,

E. A. HITCHCOCK,
Secretary

The PRESIDENT PRO TEMPORE, UNITED STATES SENATE.

DEPARTMENT OF THE INTERIOR,

Washington, October 11, 1901.

SIR: I inclose herewith for your consideration a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, submitting an agreement concluded with the Rosebud Indians for the cession of their unallotted lands in Gregory County, S. Dak.

If, after consideration by your office, no objection to its approval is found, you will please cause proper report to be prepared for presentation to Congress, with a view

to the ratification of the said agreement, together with the necessary estimate of appropriation for carrying the same into effect.

Very respectfully, F. L. CAMPBELL, *Acting Secretary*.
The COMMISSIONER ON INDIAN AFFAIRS.

DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE,
Rosebud Agency, S. Dak., April 6, 1901.

DEAR SIR: I am here to negotiate with the Indians of the Rosebud Agency for the cession of the unallotted portion of their reservation situated in Gregory County, S. Dak., and in order to ascertain the number of acres in the tract proposed to be ceded it is necessary for me to know definitely the present boundaries of Gregory County, and therefore apply to you for the desired information.

The western boundary of Gregory County, as shown by the map of South Dakota furnished me by the Department for my information in the premises, is the line between ranges 73 and 74, and the northern boundary is the township line between townships 99 and 100 north, while Carter's edition of the laws of South Dakota for 1897, a copy of which is on file at this agency, gives the northern boundary of said county as the line between townships 100 and 101, extending from the Missouri River west to its intersection with the tenth guide meridian, which, as shown by the map, is also the line between ranges 73 and 74.

I would also respectfully request that you advise me as to the northern boundary of the Rosebud Indian Reservation at that point with reference to the southern boundary of Lyman County, whether or not there is a

strip along the southern border of Lyman County within the Rosebud Reservation, as appears to be the case from the reservation boundaries as described in the Sioux agreement of 1889 (act of Marcy 2, 1889).

If the northern boundary of Gregory County is now on a line with the south line of Brule County (if extended) as it existed in 1889, there is no Indian reservation north of the south line of Lyman County, provided the said southern boundary is the township line between towns 100 and 101, instead of between townships 99 and 100, as shown by the maps furnished me.

I desire this information so that should an agreement be concluded with the Indians, it may be made to include any strip that might be in the southern portion of Lyman County north of the Gregory County line from the Missouri River west to the tenth guide meridian, which is also the line between ranges 73 and 74. It is not desirable that any small strip which would remain as a barrier to settlement at that point be left unceded. Hence my desire for information regarding same.

Please advise me at Rosebud Agency, S. Dak., regarding the above at your earliest convenience, and very much oblige.

Yours, very respectfully, JAMES McLAUGHLIN,
United States Indian Inspector.
The SECRETARY OF STATE FOR SOUTH DAKOTA,

Pierre, S. Dak.

PIERRE, *April 10, 1901.*

SIR; Yours of 6th instant to our secretary of state, making inquiries as to the boundary line of Gregory County, has been handed to me by the secretary. In reply

thereto would say the northern boundary line of Gregory County as shown by Carter's edition of our session laws, which you mention, is in accordance with the laws of 1897 and shows the correct boundary of the county—that is, the northern boundary line is on the township line between 100 and 101 and the western boundary line the line between ranges 72 and 73. This leaves no part of Lyman County within the Rosebud Indian Reservation south of the township line between townships 100 and 101. We have a United States Government map in the office under date of 1892 which gives the northern boundary line of Gregory County to be the township line between townships 99 and 100; but the laws of 1897, as I have before explained to you, changes this line and places it 6 miles farther north.

Yours, respectfully,
D. EASTMAN,
Commissioner of School and Public Lands.
Major McLAUGHLIN,
United States Indian Inspector, Rosebud Agency, S. Dak.

DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE,
Rosebud Agency, S. Dak., April 19, 1901.

SIR: Your favor of the 10th instant is received, and being of the opinion that there is a clerical error in the description of the western boundary of Gregory County as therein given, I respectfully request that you advise me further regarding same.

Your letter gives the range line between ranges 72 and 73 as the western boundary of Gregory County, while Cartes's edition of the laws of South Dakota for 1897 gives the boundaries as follows:

“SEC. 1. That Gregory County shall be bounded as follows: Beginning at the intersection of the Missouri River by township line between townships one hundred and hundred and one; thence west on said township line to its intersection with the tenth guide meridian; thence south on said guide meridian to the south boundary line of the State; thence east on said boundary line to the Missouri River; thence up the center of the main channel of said river to the point of beginning.”

The tenth guide meridian from the Nebraska State line through to the line between townships 100 and 101, as shown by the maps of South Dakota, is the line between ranges 73 and 74; and desiring to have any agreement that I may conclude with the Indians for their Gregory County Islands embrace all the unallotted portion of their reservation which is situated in Gregory County, I must, therefore, be prepared to give an accurate description of the tract ceded.

Please advise me regarding the boundaries, so that I may know exact lines as they now exist.

Very respectfully,
JAMES McLAUGHLIN,
United States Indian Inspector.

Hon. DAVID EASTMAN,
Commissioner of School and Public Lands, Pierre, S. Dak.

PIERRE, April 23, 1901.

DEAR SIR: From the maps of our office I understand that the tenth guide meridian in Gregory County is on the line between ranges 72 and 73, which guide meridian north of township line between townships 100 and 101 jogs about 4 miles west, not on any township line.

However, this information I obtain only from the maps in our office. I have forwarded your letter to the surveyor-general, at Huron, who, it seems to me, must be able to furnish you the exact information you desire, and have requested him to write you.

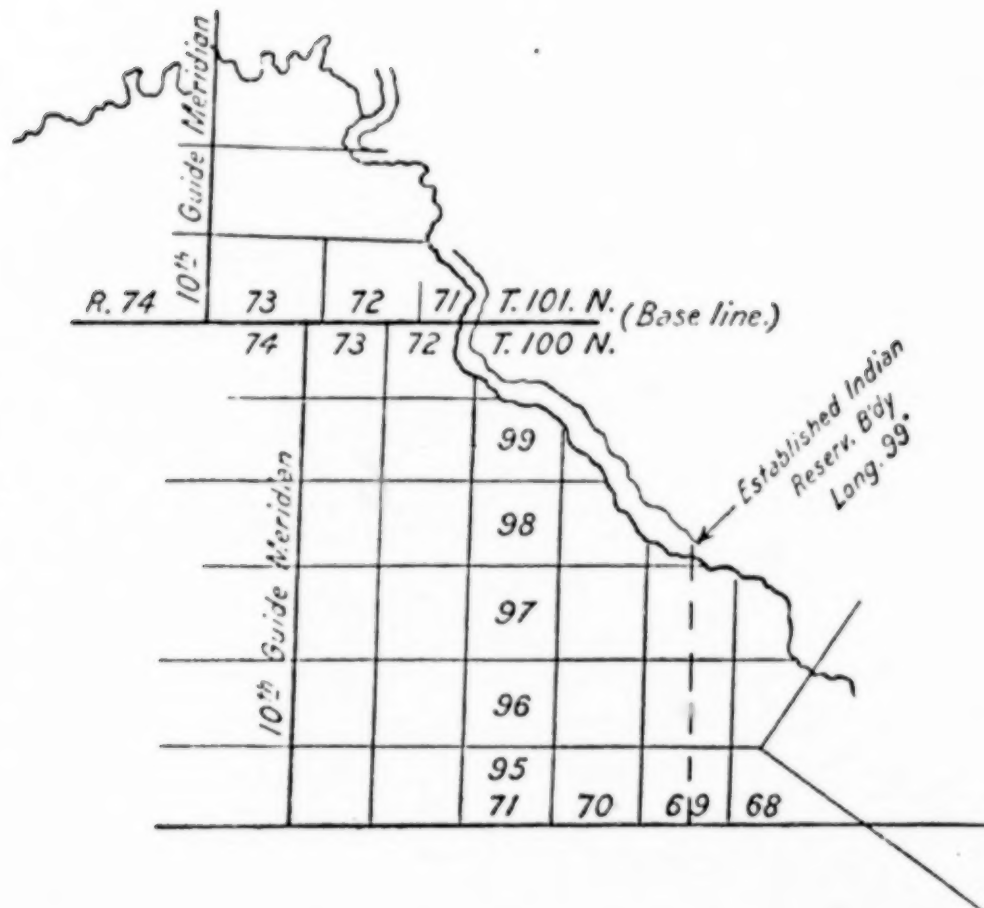
Yours, respectfully,

D. EASTMAN,

Commissioner of School and Public Lands.

Hon. JAMES McLAUGHLIN,

Rosebud Agency, S. Dak.



DEPARTMENT OF THE INTERIOR,
OFFICE OF UNITED STATES
SURVEYOR-GENERAL,

Huron, S. Dak., April 24, 1901.

SIR: Mr. David Eastman, State commissioner of schools and public lands, has referred to me your letter to him, dated April 19, 1901, relative to the west boundary of Gregory County.

In answer for him I have the pleasure to say that the description recited in your letter is still correct, no change having been made in the cessions of 1899 or 1901; and the tenth guide meridian, which is the line between ranges 73 and 74, still remains the west boundary of Gregory County.

The inclosed sketch shows that the tenth guide meridian south of the so-called "base line" (line between townships 100 and 101) is 4 miles 41.13 chains east of the portion of the same guide meridian which is north of that base line. This "jog" in the surveys probably misled Mr. Eastman in stating the numbers of the ranges.

Very respectfully,

FRANK A. MORRIS, *Surveyor-General.*

Maj. JAMES McLAUGHLIN,

United States Indian Inspector, Rosebud Agency, S.

DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE,
Rosebud Agency, S. Dak., October 5, 1901.

SIR: Under instructions contained in Department letters of the respective dates of March 21 and May 21 last, and Indian Office inclosures, I have the honor to transmit herewith an agreement, dated September 14, 1901, entered into by me, as United States Indian

inspector, on the part of the United States, with the Indians of the Rosebud Agency, S. Dak., by which the said Indians cede to the United States their surplus or unallotted lands lying within the boundaries of Gregory County, S. Dak., approximating 416,000 acres, for a consideration of \$1,040,000.

I arrived at the Rosebud Agency on April 2 last, with the view of entering upon negotiations with the Indians for the desired cession, but upon my arrival at the agency and ascertaining that smallpox was prevalent on the reservation I deemed it unadvisable to assemble the Indians in general council to discuss the matter at that time, as an assembly of the Indians from all parts of the reservation would add materially to the danger of spreading the disease, which was then epidemic in several of the camps. I, however, made a trip to the Ponca Creek district Indian settlement, which is in Gregory County, S. Dak., about 100 miles east of the agency, for the purpose of examining the lands in question and to meet and talk with the Indians of that district, they being the most affected by the cession, provided their unallotted lands in Gregory County should be opened to settlement, as such cession would bring the Ponca Creek Indians into direct contact with the whites locating upon the ceded lands.

During the said trip I traveled over the greater portion of the reservation embraced by Gregory County, and thus obtained a pretty thorough knowledge of the character of the country and quality of and value of the land, and upon my return to the agency on April 18 reported the result of my trip and recommended the postponement of negotiations until smallpox and other conditions were more favorable, which recommendation was approved, and I proceeded to carry out other orders in the meantime.

I returned to Rosebud Agency on August 28 last, as directed by Department telegram of August 15, and at once entered upon negotiations, which, though somewhat protracted and at times discouraging, have been satisfactorily concluded.

When first assigned to this work I had grave doubts of the Indians consenting to the cession of that portion of their reservation; but, after my visit to the agency last April and talking the matter over with a number of them, I became satisfied that an agreement could eventually be reached provided the compensation and manner of payment could be agreed upon, as the Indians of the western portion of the reservation were not actively opposed to the cession, but held the land at a very high price.

Upon my arrival at the agency on the 28th of August last the Indians were notified to meet me in general council on Thursday, September 5, for consideration of the matter, this length of time between notification and date of holding the council being necessary to enable the Indians to reach the agency from the outlying settlements.

I was greatly handicapped in the beginning by the fact that most of the Indians disposed to entertain a proposition for the cession of said tract held the lands at an enormous price—from \$7 to \$15 per acre—with only a few who expressed themselves as willing to accept as low as \$5 per acre; this in cash and all at one payment. And upon my arrival every white man connected with the agency and those of the surrounding country with whom I talked regarding the matter held the lands in question as worth \$5 an acre; that adjacent lands in Gregory County, S. Dak., and Hoyt County, Nebr., were selling at from \$5 to \$10 an acre; that a syndicate of cattlemen in Sioux City, Iowa, were willing to pay \$5 per acre for the entire

tract, and these current rumors and fictitious values placed upon the lands being circulated among the Indians exercised them very much, and had to be overcome by reasoning, which required time and a great amount of patience.

At my first council, on September 5, I informed the Indians of the desire of the Government for the cession of their surplus lands in Gregory County, explaining to them that they did not need those unallotted tracts and were deriving no revenue therefrom, the proceeds of which, if ceded to the Government, would be of great benefit to them in providing for their present and future needs.

After my explanation of the matter the Indians asked for an adjournment of the council that they might consider the question among themselves, which adjournment was granted, and they did not return until Tuesday, September 10, whereupon they notified me of their refusal to consider any proposition whatsoever for the cession of said tract. I prevailed upon them, however, to consider the matter further and meet me again in council on Thursday, September 12, upon which latter date, finding them still unwilling to dispose of the land or set any price upon it, I made them a flat offer of \$2.50 an acre for the tract, telling them that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County, and that while I regarded the land worth \$2.50 per acre, it was all that it was worth, and that I would not increase the offer, whereupon a number of the older men withdrew from the council; but I succeeded in having a majority of those who had assembled remain until we arranged for another council, to be held on Saturday, September 14, on which latter date an agreement was reached. The minutes of several councils, consisting of 52 typewritten pages,

transmitted herewith, show the many questions raised and objections of the Indians, also my answers to their numerous contentions, until I finally succeeded in having a number of the leading men see the wisdom of cooperating with me in formulating an agreement.

The land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and although the Indian allotments comprise much of the choicest lands, yet a great deal of good land remains unallotted. The whole tract is excellent grazing land, and the greater portion is good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season, and I regard the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

Gregory County embraces 521,050.24 acres of the Rosebud Indian Reservation, upon which 452 allotments, aggregating 104,909 acres, have been made, leaving 416,141.24 acres unallotted, which is covered by the cession and stated in the agreement "as approximating 416,000 acres" for a definite lump sum, practically \$2.50 per acre.

The cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek day School (the latter now abandoned), 78.76 acres to the Catholic Mission, and two tracts of 80 and 40 acres, respectively, to the Congregational mission—a total of 398.67 acres thus reserved, which is included in the unallotted tract ceded.

The stock cattle provided for by Article III of the agreement will be of great benefit to the Rosebud Indians, who have such magnificent stock ranges upon their reservation, and the cash payment for five years will aid them materially in providing for their family needs

for that period, after which the matured cattle, increase from the stock issued to them, will be marketable, and with proper care will give them an annual revenue thereafter.

I was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of their reservation; also for the purchase of lumber for the construction of houses, and both myself and Agent McChesney endeavored, by sound reasoning, to have the Indians accept such provisions; but they would not consent to it, they maintaining that those in need of dams and reservoirs could construct such themselves, and those requiring lumber could purchase it with the money when they receive their respective per capita shares; that if lumber was provided for issue to the Indians an equal per capita distribution it could not be made, but that by receiving money each could thus receive their proportionate share and could then purchase what they stood most in need of.

They insisted for a long time upon having the entire \$790,000 cash payment paid to them in one payment, but I finally succeeded in having them accept it in five annual installments of \$158,000 each, which, with the present number of Indians belonging on the reservation, will approximate about \$30 per capita annually for five years.

I forward by this mail, in a separate package, a map, which I had prepared by Allotting Agent W. A. Winder, of that portion of the Rosebud Reservation embraced in Gregory County, S. Dak., which shows the Indian allotments up to date, and names of the allottees within the ceded territory; also the unallotted portions.

I transmit herewith (Exhibit No. 3) package of correspondence with certain State officials of South Dakota relative to the boundaries of Gregory County, S.

Dak., as at present defined and organized, which shows that the boundaries of the tract ceded by Article I of the agreement are correctly described therein.

In conclusion, I desire to state that I regard the compensation and manner of payment provided as just and fair both to the Indians and to the United States; that the price stipulated in the agreement is fair compensation of the lands, but no more than they are worth; that the manner of payment was the best, both for the Indians and the Government, that the Indians would accept; that the stock cattle and five annual cash payments, approximating \$30 per capita, will be of great benefit to the Indians in giving them a good start toward their self-support, and I most heartily recommend approval and ratification of the agreement.

In closing, I desire to acknowledge the valuable assistance rendered me by Agent McChesney in obtaining the required number of signatures (over a three fourths majority) after the agreement was reached; also his earnest cooperation throughout the negotiations.

I am, sir, very respectfully, your obedient servant,

JAMES McLAUGHLIN,

United States Indian Inspector.

The SECRETARY OF THE INTERIOR,

Washington, D.C.

Proceedings of a council held by James McLaughlin, United States Indian inspector, with the Indians of the Ponca Creek district, Rosebud Reservation, S. Dak., in regard to the sale of their unallotted Gregory County lands to the Government.

April 13, 1901.

Inspector McLAUGHLIN. My friends, I have called to see you to-day for the purpose of ascertaining whether or not you are willing to sell the unallotted lands in Gregory County to the Government. As you all understand, under your old treaty of 1868, it requires a three-fourths majority of the adult male Indians in order to legalize any treaty for your land. It requires three-fourths of the adult male Indians of the entire reservation. Before talking with the Indians of the reservation, I desired to see and learn something of the character of the land and to meet you people in this district, who are more directly interested than the others. You doubtless know that there has been considerable talk for the past two years of negotiating with you people for this corner of the reservation. Last year there was legislation introduced, but it failed to become a law. This last session of Congress a bill was introduced, authorizing the Secretary of the Interior to negotiate with the Indians for this land, and it is a general law now.

Gregory County, of your reservation, embraces about 521,000 acres. There has been allotted to you people, and to those who have come here from the Lower Brule Reservation, about 103,000 acres, which leaves about 418,000 acres of unallotted land lying within Gregory County. There are 11 of you people in the Ponca Creek district who have not been allotted, and 18 of the Indians of the Big White River district unallotted, making 29 who have yet to receive their allotments, which would take about 9,000 acres, thus leaving you about 409,000 acres of land that would not be allotted.

Now, in case of making an agreement for the land, you people are the most interested of any of the Indians of the Rosebud Agency, for the reason that it brings you into direct contact with the white men. If the agreement

is concluded with you people the lands are to be opened to settlement. That means, of course, the white man coming in among you and locating upon the lands that have not been allotted.

In negotiating with Indians for tracts of land, a portion of which has been allotted to them, the privilege has been given the Indians to elect whether they shall remain upon their allotments or relinquish their allotments and remove to the reservation. I do not think that it is for the best interests of the Indians at any time to vacate their allotments. The lands that you have taken are, of course, the best lands of this county, and it is very doubtful if you could find as good land anywhere within the diminished reservation for the reason that the best lands have all been allotted.

Now these are matters you want to consider in discussing this proposition. If you desire to cede these lands to the Government, I am authorized to enter into an agreement with you, and if your unallotted lands here are thrown open to settlement, you will be brought into contact with the white man, and in that way, being more interested than the rest of the Indians living in the western part of the reservation, I wished to see you first before I talked with them about the matter, and, as I said in the beginning, I have been looking over your lands on my road coming through, and I have observed closely the character of the soil, which I wished to do before I begun negotiations with you.

Any agreement that we may enter into for the cession of your land will be conducted in a general council of all the Indians of the reservation, but I meet with you to-day in preliminary council—the first council—for the reason that you are the persons most interested.

If this 409,000 acres of unallotted land within Gregory County is ceded to the Government, the proceeds of it

will be of very great assistance to you by enabling you to advance well in industrial pursuits. These surplus lands are practically of no use to you, and many cattle belonging to outsiders come in and eat up your grass, and you might better dispose of it than to hold it longer, now that your allotments are secure and each man knows where his land is. The opening of unallotted lands to settlement will bring the white people in upon this part of the reservation, opening up farms, improving this section of the country, and will increase the value of the land throughout the whole section.

The sale of these lands to the Government will be of benefit to you for the reason that you will not be annoyed and worried by the trespassing of the white man's stock upon your lands, and for the reason that you will have the proceeds of the sale of this land to invest in other ways. I am not prepared to say to-day how much I can offer you for the land, as I am just starting in, this being my first council, but I wish to ascertain from you people whether you wish to dispose of the land or not, after which we can then discuss the matter and fix upon some figure and manner of payment.

I will now listen to what you may have to say in regard to the matter. I am ready to answer any questions that you may ask me in regard to it, and after you are through I will talk a little further. Now, the question that I would like to have you answer is whether you desire to dispose of your lands in Gregory County or not. If you dispose of this surplus land it will leave you about the same sized reservation as the Pine Ridge Indians have. You will understand that you lose none of your Indian rights by retaining your allotments. You retain all of your Indian rights the same as you now have.

MILK. Now, we do not want anybody to talk but Swift Bear. We have elected for him to make the speech.

SWIFT BEAR. This is what we have said: You come to work for the Indians and you are a good man; but, my friend, the land I am now on is ours, and we do not want to dispute with the Great Father about our land. Look at me right straight. We are talking. I am the chief of the land, and you have come direct to me and asked me questions. This is the question you have asked—whether we want to dispose of the land or not. Now, I will say this, my friend: We have a very small amount of land here, and we can not sell it. This is all the land we have got, and we have no other land anywhere, and if I drop this we will die poor. Of course, this land is mine, and I would not part with it. Now, look at me, my friend; my heart is white and so is yours, and so we sit and look at each other.

I have not got much to say, but I want to tell you this: We are a small band of people here, and when you go back and see the people at the agency and whatever you have to say to the people there we will be there and go with the people there. That is all that I have to say to you, my friend, and I want you to go and not say anything more. I object to selling the land. I love my land, and I do not want to sell it, and so I speak freely to you.

Inspector McLAUGHLIN. Well, my old friend, you gave me an answer. I did not expect you to come to a conclusion to-day. My object in coming here at this time and having a council with the Indians of this portion of the reservation was to let you know the nature of my business here and present the matter to you so you could discuss it yourselves, and after placing the matter before you for you to think of I intended to go up and see the Indians living in the Big White River district, as they are also interested. After talking with them I will return to the agency and call a general council of the Indians of the

entire reservation to meet at the agency. When the date of that council has been decided upon, a messenger will be sent down here to notify you people, and you will be given plenty of time to reach the agency, and the same will be done with the Indians at White River; but as they have the bad sickness—the smallpox—I will not assemble the Indians in a general council at this time. I think it unadvisable to assemble a general council at this time, as many people have been exposed to it, and they might spread it all over the reservation. When I return to the agency from here, if I find the smallpox still there I will notify the Secretary of the Interior and ask to go and attend to some other business, and then return here and assemble the general council.

I want you to understand that any general council that may be called to discuss this matter, you people here will be notified and given ample time to reach the agency, for the reason, as I said, that you are more interested than any of the other Indians of this agency.

I want you to understand that I come here as your friend. I am not here to buy land for myself—I do not want any of your land. I have been sent here by the Secretary of the Interior to represent the Government in this particular work, and I intend to have you understand it thoroughly and clearly. If there is a matter that I think is for the best interest of the Indians, I always explain it and see that it is thoroughly understood by them. I will say to you now that any agreement that I may make, should an agreement be concluded, I will be perfectly satisfied in my mind first that every one of you understand each article before it is signed.

No matter what the outcome of this may be, whether you cede the land or not, we will still be friends; we will part as friend, and when we meet again it will be as friends. If we make an agreement, I will prepare that

agreement so carefully that your interests will be guarded.

I have made a great many agreements with the different tribes of Indians of the United States during the past five years, and there is not a single agreement that I have made during those five years but what has been in the interest of the Indians; and they are so thoroughly in the interest of the Indians that they have always been satisfied with the outcome of them.

In case we make any agreement which will be satisfactory to you people, subject to the approval of the Secretary of the Interior, it must be ratified by Congress before it becomes a law.

My friend, Swift Bear, here says he has a very small piece of land. I do not regard the Rosebud Reservation as a small piece of land. I regard it as a very large piece of land, and after every man, woman, and child of the reservation has received an allotment you have a great deal of surplus land left. By disposing of this little corner of the reservation it would leave you a nice, square reservation, and the proceeds of the sale would benefit you very much.

You can look back in the past and see that when the white man wants a piece of land he keeps after it and after it until he gets it. Now, the white men of South Dakota, the best men of this country, have been demanding of Congress and of the Department for some years past that this corner of land be opened up to settlement, so that Gregory County will be able to maintain itself as an organized county. It is for the Indians of the Rosebud Reservation to say whether they want to sell it or not. You may refuse, and they will keep after you to sell it—keep working and introduce bill after bill until they will finally get this piece of land from you, and the best thing now for you is to consider this matter

and get the best price obtainable for it, so that you may be benefited as much as possible in building up comfortable homes for yourselves. Think the matter over well and discuss it among yourselves, and look at it from all sides and see whether it is best for you to own the land yourselves, or dispose of the unallotted portion and from the proceeds derive a benefit that will enable you to own more cattle and fix up your homes better than you possibly can under the present conditions. Do not shut your eyes and close your ears and say: We will not talk about this matter at all. Think of it yourselves and discuss the matter on all sides, and I think that you will come to the conclusion, when we meet, that it will be better for you to dispose of the surplus lands in this country.

I wish to say that I am pleased with this section of the country. You have a very pretty country here, and I do not blame you for being attached to it. If you needed these surplus lands, if they were of benefit to you, it would be different; but the white men are deriving just as much benefit from these lands as you are, who own the land. You can dispose of these surplus lands—that is, the unallotted portion of Gregory County; you can cede them to the Government and at the same time have the privilege of allowing your cattle to graze here just as much as the white man has until it is taken up by the white men as claims. Until the land is occupied and filed upon by the settler, your stock has just as much right to roam over it as the stock of the white man. I have no doubt that should this land be purchased and thrown open to settlement it will mostly be taken up by actual settlers, but there is a great deal of it will not be occupied for a number of years; but in course of time this land will all be occupied by some persons.

I have said all that is necessary to-day, and I think that you all understand me fully in regard to the matter.

SWIFT BEAR. Now, you talked twice, and I want to talk twice. You have told me that we have a large reservation—the same as Pine Ridge. Now, my friend, the nation will be increasing, and the land is something we would like to hold. That is the way I feel about it.

Of course, the land is ours, and even if you promise me \$15 an acre for it, I will squel then.

Now, there is another thing I want you to tell the Great Father: We are a great ways from the agency, and we have no doctor to take care of our sick people, and we would like to have a doctor here. If we can not have another doctor, we would rather have a doctor in place of our farmer, and the doctor could do the work of the farmer too. We think it would be better to have a doctor here than a farmer if we can not have both.

Inspector McLAUGHLIN. This being only a preliminary talk we will now adjourn, and you will be notified when a full council of the Indians is desired.

Council adjourned.

Proceedings of a council held by James McLaughlin, United States Indian inspector, with the Indians of the Big White River district, Rosebud Reservation. S. Dak., in regard to the sale of their unallotted Gregory County lands to the Government.

April 15, 1901.

Inspector McLAUGHLIN. My friends, I have come to see you to-day, not that I expect to transact any business with you, but simply to explain to you the nature of my business on the reservation at this time. Owing to the prevalence of smallpox on the reservation, and so near your camp here, I do not deem it advisable to assemble

the Indians, and therefore will explain to the few who are here, and you can tell the others what I am here for.

The Government desires to purchase of you people the unallotted portion of the Gregory County lands. I will point out to you on this map the tract of land desired, so that you may see and understand it better. In case of the cession of the unallotted lands lying within Gregory County, you who have received allotments will not be disturbed on your land at all. Every person would have the privilege of remaining on the land that has been allotted to him, or of relinquishing it and removing to the diminished reservation, but I would advise you who have selected tracts of land to remain upon your allotments in case of the cession of this land to the Government.

The cession to the Government of your unallotted Gregory County lands will bring you into direct contact with the whites, because the country will be open to settlement, and that will bring the whites right among you.

It requires three-fourths of the adult males of the entire reservation to sign the agreement to make it binding, and, as the consent of the Indians of the other portion of the reservation would be enough to make it legal, yet I did not want that— I want the full concurrence of all the Indians of the reservation; and as you and the Indians living in the Ponca Creek district are the most interested by being brought into direct contact with the white man should this portion of your reservation be thrown open to settlement, I came here to explain this matter to you first. After you all have your allotments, the sale of this surplus land of yours in Gregory County to the Government, which is now useless to you, would enable you to get a good start, as you are now very poor and have very few cattle.

Now, any talk that I may have with you in concluding an agreement will be had in a general council of all the

Indians which will be called to meet at the agency, and when the time is set for that council you will all be notified, so that you may be present.

Desiring to be fully informed in relation to this matter, I made a trip to this tract of country, and we have made a journey over the greater portion of it and have seen how the Indians are situated, and I am now prepared to act more intelligently than I could have without having seen the character of the country.

I am very sorry to find that my old friends, Medicine Bull and One to Play With, are not here to-day; but as I merely came here to meet you people, I go ahead and explain the nature of my business, so that you may think it over and discuss the matter fully among yourselves. We are not going to transact any business to-day, as we are not ready for that, as I want to have every Indian of the reservation meet in council, so that they can all hear what is said on both sides.

The Secretary of the Interior, under whose orders I am here, and under whose instructions I will negotiate with you for the sale of this land, I am sure would not wish me to endanger you in regard to the spread of smallpox, and I am satisfied that he will direct me to postpone the general council until such time as it will be safe to convene such a council; but while I was here I wanted to explain these matters to you.

I will say to you that we are not strangers. We have met before, and any agreement that I may conclude, as a representative of the Government, with your people of the Rosebud Reservation I will see that every word is carefully understood and the agreement carefully prepared before it is entered into. If we conclude an agreement we will be friends, and if we fail to conclude an agreement we will still be friends.

I want you now to talk among yourselves about this matter. I do not want you to close your eyes and say We

will not listen. That is not the way to do. I want you to discuss this matter among yourselves, so that we can arrive at some agreement. By the sale of this tract of country you will lose so little land that you will hardly notice it out of your reservation.

As your leaders, Medicine Bull and One to Play With, are not here to-day, I do not deem it necessary to say anything more on this subject, but when the general council is held at the agency you will receive notice and will be given ample time in which to reach here. If there is anything that any of you wish to say, I will be glad to hear it; but if you wish to defer speaking of the matter until some future time, well and good.

OLD LODGE. Of course we do not want to express ourselves right now, but we will get together ourselves in a few days from now and we will consider this matter very carefully, and when we come to the regular council we will then notify the people of our thoughts in regard to the land.

I certify that the above is a true transcript of the councils held, as above stated.

H. B. COX, *Assistant Clerk.*

ROSEBUD AGENCY, S. DAK., *April 20, 1901.*

Proceedings of a council held by James McLaughlin, United States Indian inspector, with the Indians of Rosebud Reservation, S. Dak., with reference to the cession of their unallotted lands in Gregory County, S. Dak., to the Government.

September 5, 1901.

Agent McCHESNEY. My friends, you have been convened in council at the request of Inspector McLaugh-

lin, who is here to negotiate with you for the cession of Gregory County, which is the eastern portion of your reserve. You have all met him before, and he needs no introduction to you. I wish you to listen carefully to all he has to say to you and to consider well what he proposes to you. You know he is a good friend of yours, and you can place entire confidence in what he tells you.

Inspector McLAUGHLIN. My friends, I am glad to meet you again and see so many of you here to-day. We are not strangers, having known each other for many years, and you all know that I am your friend, and a good friend of the Indians.

I am here under orders of the Secretary of the Interior, who was authorized by Congress, at its last session, to negotiate, through any Indian inspector, with any Indian tribes for the cession of their surplus lands, and he has sent me here to negotiate with you for your surplus lands in Gregory County, that is, for all of your lands in Gregory County that have not been allotted to Indians.

I visited that portion of your reservation last April to inform myself as to the character of the country and quality of the land, and having traveled over a considerable portion of that district I am prepared to proceed understandingly in the premises. Owing to the prevalence of smallpox on the reservation when I was here last April, I did not assemble you in general council, but postponed the matter until now, when health conditions are favorable.

You doubtless know that there has been considerable talk among the whites the past few years to have Gregory County unallotted lands opened to settlement, and that portion of your reservation is a square tract surrounded by whites on three sides; it is believed that its unallotted portion should be ceded by you to the Government and opened for settlement. All of you of the Ponca Creek

district have now your lands secured by allotment, and the opening of the unallotted portion would benefit you by enhancing the value of your lands, and as it is only a question of time, a few years at the most, until that portion of your reservation will be opened for settlement. I believe it for your best interests to consent to its cession at this time. I am in hopes that we can reach an agreement, such as will provide a reasonable consideration for the tract, the proceeds of which will be of great benefit to you at this time and for your future welfare.

Gregory County, as now organized, embraces 521,050.24 acres of your reservation, of which 104,909 acres have been allotted, leaving 416,141.24 acres of surplus Indian reservation lands in that county. This latter acreage includes 160 acres reserved for the Ponca Creek issue station, 40 acres each for the Ponca Creek and Milk Camp day schools, and 198.67 acres for mission stations, a total of 438.67 acres thus reserved, which will be included in the cession. The lands that you have taken by allotment are, as a matter of course, the choice lands of this district. You have thus appropriated all the living water along Ponca Creek and its tributaries, and it is the desire of the Department that you retain your allotments; in fact, a removal of any of the allottees to other lands would not be favored.

If an agreement for these lands is reached by us, the allottees of the Ponca Creek district will be brought into direct contact with the white settlers; but, as I said before, it is only a question of time until that condition has to be met, and from what I saw and observed of the advancement and intelligence of the Indians of the Ponca Creek district during my tour of those settlements last April I regard them fairly well prepared to meet the conditions that the opening of that settlement will bring to them.

These surplus lands are very little use to you as a people, or even as individuals, and the proceeds of it, judiciously expended, would be of great benefit to you all, and you might better dispose of the surplus lands of that corner of your reservation than hold it longer, now that all residing in that locality have your allotments secured and each knows where his land is.

The cession of Gregory County will leave your reservation a compact, and almost square tract, and would leave your reservation about the size and area of Pine Ridge Reservation.

We enter upon these negotiations as friends, and whether we conclude an agreement or not we will part as friends, so that when we meet again it will be as friends. If we reach an agreement I will prepare the paper so carefully that your interests will be guarded and fully protected.

I will now listen to what you have to say, and will endeavor to explain everything relating to the matter that you may wish to know. Here is a map sent me by the Department upon which is indicated by green lines the Pine Ridge and Rosebud Reservations. [Produces the map and explains to the Indians assembled.]

TWO STRIKE. I will ask you to tell about the price you are going to offer for the land which you have mentioned to us.

Inspector MCLAUGHLIN. I would say that I have not fully considered the matter, nor can I arrive at that definitely until I have an expression from you first. I would like to hear how you feel in regard to the matter. I want to give you a good price. I want to give you all the land is worth; all that the Department would be likely to approve or that Congress would ratify, and it would be useless for me to make an offer as to price in the beginning, or manner of payment, until I know that you

are willing to dispose of the land, and therefore, I want to hear from you first, and then, if you consent to dispose of the land, I will make you an offer for it.

TWO STRIKE. That is what we want; we would like to know the price.

LOAFER. I think it would be well for us to retire and consider the matter, then return and tell you about what we think.

Inspector MCLAUGHLIN. That is a good suggestion. I will first say that there is a lowest and highest price for Government land, known as the minimum and maximum price. The minimum price for Government land, which is the lowest price, is \$1.25 an acre; but your land is worth more than that, and I am ready to listen to any reasonable proposition and consider it and give you all that is possible, but it must be such as to meet Department approval and ratification by Congress.

LITTLE CROW. Well, you say \$1.25 an acre. We ought to have a little more than that.

Inspector McLAUGHLIN. I am willing to give a little more than that; yes, considerable more than that.

The Indians then retired to counsel over the matter themselves.

A delegation of the Indians called at the agency office Friday, September 6, and reported that the Indians desired to counsel further among themselves, and would again meet the inspector on Tuesday, the 10th.

Council convened Tuesday, September 10, at 2 p.m., about 350 Indians in attendance. Joseph de Marsche, interpreting.

Inspector MCLAUGHLIN. My friends, we meet after several days' adjournment to give you an opportunity to discuss this matter among yourselves. I hope that you have reached some conclusion, and I am now ready to hear what you may have to say regarding the cession of those lands.

RED FISH. My friend, I would rather have you tell us what you came for and let us know; then we will all tell you all about it.

Inspector MCLAUGHLIN. I explained that to you people last Thursday in council. The object of my visit here is well known to each and all of you. I will repeat again, however, that I am here to treat with you people for the cession to the Government of your unallotted lands in Gregory County. I pointed out to you on the map where the tract of land is, and I gave the map to one of your people that he might explain to those in council who desired to know. The Secretary sent me here to try and negotiation an agreement with you for the lands within the Rosebud Reservation that are embraced in Gregory county that are not allotted to Indians. It takes two parties to make a bargain. You are one party, and I represent the Government as to the other party in this negotiation that we are now entering upon; and the first thing that is necessary for us to arrive at is as to whether you are prepared to enter into an agreement for the cession of those lands or not. I am now ready to listen to you.

LITTLE CROW. You have a paper to read to us in regard to this matter, and if you will get it out and read it to us we will be ready to answer to your questions.

Inspector MCLAUGHLIN. I have nothing with me as a paper other than my instructions, which, in case I read to you, you would not understand. I will read, however, a letter from the Secretary of March 21 last, which is as follows:

"I transmit herewith a draft of instructions for your guidance in negotiation with the Rosebud Indians for cession of that portion of their reservation in Gregory and Lyman counties, S. Dak.

"Upon receipt of these instructions you will proceed to the Rosebud Indian Reservation, S. Dak., and carry the same into effect."

The following is an extract from letter of instructions prepared by the Indian Commission, which is referred to in the Secretary's letter just read:

"The consideration to be paid the Indians for the surplus lands in question should be a fixed definite lump sum. It is impossible for the Department to indicate the price to be paid. It should, however, be just and fair both to the Indians and to the United States. In fixing upon the price you should not lose sight of the fact that no doubt a great deal of the choicest land within the district named has been allotted, leaving the less desirable portions. In the agreement with the Rosebud Indians on March 10, 1898, providing for the location of certain Lower Brule Indians upon the Rosebud Reservation, the consideration was fixed at \$1.25 per acre for lands actually required as allotments for such Lower Brule. This of course contemplated the selection of the choicer lands, and can not, it is thought, be taken as an index in determining the price to be paid for the surplus lands now under consideration."

Now, as these instructions were prepared from the price indicated there by the person who prepared it, with the signature of the Commissioner and the approval of the Secretary, I inferred that they expected these lands to be purchased at \$1.25 an acre, and I did not believe it was enough. I, after visiting the country, wrote a three-page letter to the Secretary, reporting my trip—that is, I refer to the character of the country, the quality of the lands, tracts taken by the Indians, and unallotted portions. My instructions were then modified by a letter of late date, as follows:

"The office did not mean by the foregoing instructions that the inspector should be limited to \$1.25 an acre as the price to be paid for the Gregory County lands. The office is reliably informed that the lands in question are of excellent character for that locality and are worth considerably more than that amount.

It is, therefore, respectfully recommended that Inspector McLaughlin be advised that, if a satisfactory agreement with the Indians can be reached so far as the other necessary terms contained therein are concerned, he is authorized to agree to pay the Indians such sum for the lands ceded as they are fairly and reasonably worth, even though the rate per acre exceeds \$1.25."

The Secretary then, in transmitting the modified instructions, wrote this letter:

"Referring to Department letter of March 21 last, transmitting instructions for your guidance in certain proposed negotiations with the Indians of the Rosebud Agency, S. Dak., looking to the cession of a portion of their reservation, I now transmit for your information a copy of a letter, dated the 20th instant, from the Commissioner of Indian Affairs, relating to the question of the price to be offered for the said lands, stating that it was not contemplated by the original instructions to confine or limit the price to be offered and paid to \$1.25 per acre, as seemed to be apprehended by you, from the statements made in your report of the 29th ultimo, in which, owing to the sanitary conditions then prevailing on the reservation, you reported that it was impracticable to get the Indians together, and that a conference with them would have to be deferred to a later period."

My friends, these are all the instructions that I have. The matter is left largely with myself to determine what

would be a fair and reasonable price, what the Department would approve, and what Congress would ratify. If I want to buy a horse from an man I generally want to ascertain what he asks for it in the first place, and therefore I would like to hear from some you leaders—first as to whether you wish to sell those lands or not, second, as to the price you hold them at.

SWIFT BEAR: You look right at me. I have heard all you have said. All thses people are mine, you belong on the other side. You belong to those people, and you are telling what they have to say about. You are talking about the land where I am living. Is that right?

Inspector MCLAUGHLIN: Yes; in the Ponca Creek district.

SWIFT BEAR: When you visited me last spring, I talked this way to you. You offer too low a price: I can not come down to it. When you were over there last spring, you said to me that if you had a horse to sell you would sell it to any person that wanted it at a certain price, and if you got your price you would sell it. But, my friend, I do not want to sell my horse. He is too poor now, and I don't want to sell him, and I am speaking the minds of my people when I say: "We don't want to sell our land."

I want to tell you one thing: When you were here three years ago, you told us that if the allotments were divided up, giving man and wife equal shares, they would each receive the benefits—that is, each would receive payment—but that has not been carried out as you promised.

ONE TO PLAY WITH: I want to ask you one question. These people arround here tell me that you want to buy Gregory County. Now you come in and say that Lyman County is included in that.

Inspector MCLAUGHLIN. It is all in Gregory County. Gregory County has been extended through to the line

between townships 100 and 101. There used to be one tier of townships of your reservation in Lyman County. When preparing my instructions they were not certain as to whether a portion of Lyman County was in your reservation or not, but this was settled by a letter and map I have received from the surveyor-general of the State.

ONE TO PLAY WITH. Why did you mention two counties instead of one?

Inspector MCLAUGHLIN. I am not treating with you for any land except those in Gregory County as it is now organized. Lyman County was mentioned in my letter of instructions which I read to you, as it was thought by the clerk in the Indian Office who prepared said instructions that possibly the reservation extended into Lyman County. Hence his mentioning it, but he knew that I would ascertain definitely before I commenced negotiating with you for the land.

ONE TO PLAY WITH. Only one thing you are doing here is just asking us questions—just asking us whether we want to sell the land or not.

INSPECTOR MCLAUGHLIN. What price do you hold the land at—that is, the unallotted land in Gregory County? We want no other lands except those in Gregory County—the unallotted.

ONE TO PLAY WITH. Well, I know, but I don't want to sell it, and I don't want to say any more about it.

RED FISH. All of us people down in the lower part of the reservation have got children, and we don't know what to do, and we have just stuck one of these white willows in the ground. We have stuck one of those white willow trees in the ground, and we brace our heart to it. All of our little children and ourselves we take our hearts as one and embrace it.

Since the Lower Brulés came on this reservation the children that have been born since that time have no

rights to take allotments, and that is the reason that we want to hold the lands.

My friend, that is the reason I want to tell that I don't want to sell, and I brace my heart against this willow.

GOOD VOICE. All of our people east of here want me to say certain things. You have just come here to ask us a question. Since you only came here to ask us a question, we have stuck that willow in the ground to set fast to with our hearts. We don't know what to do, so we stuck that fast there to hold on to. Since you have come here just to ask us questions, we have put that willow in the ground, and we want you to take that offer back with you and think the matter over. If you ever come again, by that time we will know what to do, and then you can come here again.

TURNING HAWK. My friend, look me in the face. My people have sent me here to say a word, and I am going to say it on account of my people. I have been thinking about our children growing up, and I want to say something in regard to them. While I am not a chief myself, yet I am going to say something that I will stand by. Our children will grow up here yet, so we don't want to sell the land, and I thought I would come here and tell you about it. We people have got to live yet, and the children are growing up; therefore I don't want to sell it.

Inspector MCLAUGHLIN. My friends, I hoped to have an expression from you in regard to the price you hold those lands at, but all who have talked have spoken in opposition to the cession.

HIGH HORSE. My friend, you have come here to talk about the people's lands here, and want to ask me a question. I will never help the President any more, and I am not going to give you this land.

Inspector MCLAUGHLIN. There have been six of you speakers who say that you do not wish to sell your land.

My friends, frequent complaints have been made to the Department that the Rosebud Indians were destitute and suffering because of short rations, but your refusal to sell your unallotted lands in Gregory County will satisfy the Department that you are not so needy. If a man should have a horse for which he had to use and represented to me that he was broke and hungry, and then should refuse to sell the horse at any price, I would conclude that he was not deserving of help. If I knew that you needed those lands I would not urge this upon you, but your unallotted lands in Gregory County are not doing you any good whatever, and I am prepared to give you a good price for those lands, the proceeds of which will enable you to advance yourselves in industrial pursuits. I am prepared to have a portion of the consideration paid to you in stock cattle, and a portion of it in cash, and a portion of it used in building dams and reservoirs on your reservation where there is no water, where you have excellent ranges but no water for your stock. The white people of the country, and particularly those in this section of the country—that is, I mean the section of country where your lands are—are demanding the opening of that tract of country, and it is only a question of time until it will be opened, and I can make you such conditions now that it will be of great benefit to you, and you should not come here with your eyes closed and your ears closed to any proposition that I may offer, and look at the question as it actually is—that those lands will be opened before long anyway, and now you have an opportunity of making a good bargain with the Government through me and you ought to avail yourselves of this opportunity.

I am not here of my own accord. I am sent here representing the Secretary in the matter; I am his eyes, ears, and tongue in this matter. I looked over your lands

with my eyes, and I am now explaining to you with my tongue that I am prepared to enter into an agreement giving you a good price for your lands. And I am now ready to hear with my ears whatever you have to say. I hope that you are not all set against entertaining a proposition of this kind, as those who have expressed themselves.

PETER TALL MADAN. Since you have said what you have, I feel good over it; my heart is good. You said that you were the Secretary's eyes and ears and tongue. There were six men here said something, and you answered them, and I am here to answer you too. The land that you are after, all of us young fellows like me understand what you want it for. But you said that the President would open that land after while, because some white men wanted it. We sold a big piece of land (the ceded lands across the Big White River), and it was then opened for settlement. If your people want land, why don't they take that land? There may be 8,000,000 acres vacant there yet. Now, the President was to pay us in ten years, and he ought to have done it, but he has not, and we have passed over one year. That is the reason we are starving, and that is the reason we are complaining. We have been asking our agent to write letters for us. We concluded to wait and see if the Government would pay us for that before we talk about this latter matter; that is the reason we have put us these men to say what they have said to you.

JOHN WALTER BULLMAN. I am 18 years old, and I am only going to give you one word. All of us men 18 years old are wanting to know what you want to open that land for? He has opened that other land and not paid us all of it, and now he wants us to jump over that and consider another proposition. If we go ahead and do that, what will become of that other land deal? All of us 18

years old don't want to do as you want us to do, and you, my friend, just be quiet and take this matter home and let it go.

WHITE HAWK. Those old men came here and said they did not want to sell the land, and they want me to say this in regard to it: When Crook made that other treaty, there were some school lands—school sections that ought to be paid for, and anybody coming here to help us out ought to see that the Government pays us for that. Besides that there are other treaties that have not been paid for, and if we go ahead and make another treaty all the rest of them will be the same way. One more thing I want to say. All of us that are 18 years old say "no."

BEAR COAT. I belong to a set of men 18 years old, and they want me to come here and say a few things to you. They have a horse that you came here to buy, but they can make use of that horse themselves, so they don't want to sell you that horse. We don't want to sell you our land, for we can make use of it ourselves. For once let the inspector go back without making a deal—even the girls say so.

FLY WALKING. You are a wise man who have come here from Washington. I want you to open your eyes and see all these men from 18 years up. Since you have come and set down here we have looked you right in the face. Our school lands—school sections that we sold to you—we have not received pay for yet, and that is the reason we are starving to death—because we have not received what is coming to us. So we will wait a while till we get that is coming to us; then we will argue about this other land deal. All of them that are 18 years old have come to me and told me to say "No" in regard to it.

SPOTTED EAGLE. My friend, I am 18 years old and stand before you; but I always think of Crook's treaty, and I always remember that; and on that account I don't

think it is time for any man to come here and ask me the questions you have asked me. We have not received pay for those school lands yet, and you ought not to come and talk about this til we are paid for that.

HAWK TRACK. I want to say it this way: It is not only the 18-year-old men that don't want to sell. The Government has not paid me what it owes me yet, and still you come here and try to make another deal. That other money belongs to me and he won't pay me; so in regard to this deal I say "No."

Inspector MCLAUGHLIN. My friends, in your talking and fault-finding with the Government, you seem to have lost sight of all that the Government has done for you and is now doing for you. Now, I was sent here by the Secretary of the Interior to endeavor to make an agreement with you people. I hoped when I came here that I would be able to do so, and I am going to do my part at least and announce to you what I am ready to offer for that land. I do so that you may consider it as something to think of, and in case you refuse that you will sooner or later regret that you had not accepted the offer. Now, since my arrival here last spring I have heard a great deal of talk about the value of lands in Gregory County and the price you held those lands at. I regard your lands there as good lands. I looked over them, and I am prepared to give a higher price for them than I have ever known offered for the extinguishment of the Indian title, except two pieces, and they were small tracts of land, and these two tracts of land were far superior to your land; that is, the Yankton and the Sisseton reservations. Now, in order that you may understand this matter very fully, I am going to explain to you the nature of the Indian title to lands. And I will also make you an offer for your unallotted lands in Gregory County.

The right of Indians to their reservations is that of occupancy alone; the vested right is in the United States, subject only to the right of occupancy by the Indians.

Indians have no power to sell or dispose of their reservation lands except to the United States, and while the fee or vested right to the reservation is in the United States, the right of the Indians to its use and occupancy is as sacred as that of the Government to the fee. The Indians have a right to the use of their reservation and benefits of what it produces, whether from the results of their own labor or of natural growth, so that they do not commit waste.

They are, therefore, simply tenants for life; that is, they have free use of the lands during their lives, but can not sell any such lands except to the United States, which the sale is called relinquishment of Indian title to the land. They can not lease their reservation lands except through the United States, or even individual allotments during the trust period, except by approval of the proper Government officers.

The value you place upon your lands I am now negotiating for is as high as the adjacent lands are held by whites of the locality who have absolute title to their holdings, which includes the Indian title heretofore extinguished and paid for by the Government, thus leaving their lands with unclouded title, while you have only a life-occupancy title to the unallotted lands that I am asking you to cede, the fee tenure being in the Government, and it is unreasonable for you to expect as much for those lands as if you had absolute title with the right of alienation; that, to dispose of them to any person and give clear title thereto.

Having traveled over the greater portion of your reservation, I know your Gregory County lands are

among the best of any portion of the reservation and would regard \$2 an acre a fair price for the tract which I am asking you to cede; but, as I explained to you during our first council, there is a minimum and double minimum price for Government lands, the minimum price being \$1.25 an acre and the double minimum price being \$2.50 per acre, and rather than have our negotiations fail I will allow you the higher price and will enter into an agreement with you for \$2.50 per acre, or rather for a lump sum for that unallotted tract based upon \$2.50 per acre.

This price is full value of the lands, and when taking into consideration that a great deal of expense has been incurred by the Government in disposing of lands to actual settlers, my offer is very liberal. The surveying of lands and the maintenance of the United States land offices, for their disposal under the land laws, costs considerable money, and it is doubtful if the Government could reimburse itself from the sale of these lands after paying you \$2.50 per acre for them. Some discretionary power being vested in me in conducting these negotiations, and believing that \$2.50 an acre is not an unreasonable price, yet every cent the lands are worth, I concluded best to offer you the very highest price I could allow you in the beginning, rather than offer you a lesser price at first and increase it to \$2.50 an acre later on. This is a very liberal offer and a good price for your lands, and it is reasonably certain that a higher price would not meet with the Department's approval or be ratified by Congress.

This price I offer you amounts to a large sum of money. Your unallotted lands in Gregory County approximate 416,000 acres, which, at \$2.50 an acre, is \$1,040,000, and I suggest the following manner of payment:

Fencing out boundaries of your reservation, building dams and reservoirs to retain water, where required	\$40,000
Stock cattle (2-year-old heifers and graded bulls)	250,000
Cash to be paid in five annual payments	<u>750,000</u>
Total	1,040,000

This \$750,000 to be paid in five annual payments of \$150,000 each.

The census rolls show 4,917 persons belonging to this agency, which would give an annual per capita allowance of \$30.50, that is, \$30.50 once a year to each man, woman, and child for a period of five years, aggregating \$152.50 that each man, woman, and child would receive in the five years. At the expiration of five years when this per capita payment would end, the matured increase derived from your stock cattle would then be marketable, and continue to furnish a large number of beef cattle annually thereafter which would place you upon an independent footing and, with proper care your cattle, would insure you a regular annual income

This is the largest price ever paid for land, as I said in the first place, except in the Sisseton and Yankton reservations, whose land is far superior to yours. This is much greater than I expected to have to offer when I came here, but after going over your lands and examining them very carefully, I came to the conclusion that they were worth the double minimum price, and I concluded that it was better for me to make you an offer in the beginning, what I felt justified in allowing in the agreement, than to start down low and go up to that amount. So I have presented the matter in a way that I think you will all understand, and I hope that you will not, as I said before, close your ears and eyes to this proposition, as it is a very liberal one and full value for

your land. I don't expect your answer right away, within a few minutes, but I want you to consider the matter. I want you to consider what benefit these reservoirs on the reservation will be to you and the employment it will furnish the Indians who aid in constructing them.

Then the stock cattle, which, if properly cared for, will bring about a great deal of prosperity among you people. And, in the third place, the case payment for five years, which would enable you to take care of your families without any suffering until you begin to receive returns from the marketable cattle, the increase of the cattle that will be issued to you. A great many people since I have come here have approached me and asked me what I intended to offer. I have given the matter a great deal of thought, and I have made you an offer now larger than it was my intention in the beginning; but, as I said before, after visiting your lands in Gregory County, and knowing that they are desired by the white people, I thought that the white people could afford to pay the double minimum price for the land, which is \$2.50 an acre for the tract, and I have based my proposition on that ground. Now you have the offer.

HIGH HAWK (Louis Robideaux interpreting). My friend, we have sung the "Big Belly" song right here to-day—the song we alway sing when we are going to make a treaty. On account of our children we will not sell this land short of \$5 an acre, and we want you to take this answer back to Washington.

HE DOG. My friend, we have considered this matter, and so I will make this statement to you: We can't earn anything, but we own this land that you have been talking about, and we will take \$5 an acre for it.

EAGLE HORSE. You came here to ask me to sell my horse. The horse you want me to sell I don't want to sell; I don't care whether I sell him or not. I have considered

this matter very carefully, and have come to the conclusion to sell the land for \$5 an acre. Half the money we want to our credit in the United States Treasury, the interest of which we wish to receive; and the other half we want paid to us in cash. That is all I have got to say. There are some other things that we wish stipulated in the agreement; but as I can not read and write myself, I will have the boy here, Reuben Quick Bear, read it to you.

REUBEN QUICK BEAR. The question I want to ask you is this: The other day you said that you wanted to purchase Gregory County, but now you come and say that you want that other county, Lyman County; that is what I want to find out about.

Inspector MCLAUGHLIN. We want nothing outside of Gregory County.

I simply read a portion of my instructions, which you interpreted as meaning that the reservation extended into Lyman County; but it does not, although the old maps show portions of the reservations extending into Lyman County. This was changed by the State legislature of 1897. The north line of Gregory County now extends to your reservation line at that point, and no portion except Gregory County is meant for consideration in this proposition of mine. Here is the letter and map from the surveyor-general of South Dakota to me in reference to the boundaries of Gregory County.

REUBEN QUICK BEAR. How many townships do you want to get?

Inspector MCLAUGHLIN. There are about 22, I should judge. They are not all full.

REUBEN QUICK BEAR. You have come here to make a treaty and you want 22 townships, and now you ask what price we will offer this land at. We have set the price we can sell the land at as \$5 per acre, and we hope we will

get it. We want one-half in cash, and the balance to be deposited in the United Treasury, the interest from which would be paid to us annually, after three-fourths of the people consent to this treaty. And those who have already received their allotments, when the allotments has been divided between husband and wife, we want the wife to receive her share the same as the husband, and we want all the children, as they reach the age of 18 years, to receive the same, which would be 320 acres instead of 160, as at present.

In 1898 we made the Lower Brulé agreement, and the agreement we are now going to make is this: That the children born since the Lower Brulé treaty and those born hereafter are to receive land. We also want to hold mixed bloods and white men intermarried into our tribe upon the reservation, just the same as they have been in the past, and have them fully protected. We want the payments to be issued to all those who were here upon the reservation, and the mixed bloods as well as the Indians. When you take the report of this council back to Washington, if Congress don't ratify this agreement then they do not want the land, and the thing has fell through with. It would make you sorry if you would go around among the Indians and see some places where the rain beats through the roofs of our houses. The reason I say this is because if we got some money we would repair them, and we could buy mowing machines and whatever we need for ourselves. I have mentioned to you already that we want part of the money put in the Treasury of the United States, so that we would have something laid up for the future; and that is all I have to say.

(Joseph De Marsche interprets from this on to adjournment.)

Inspector McLAUGHLIN. That is a very good talk of Reuben's, and it brings up so many questions that I deem

it necessary to reply to it at once. Now, I say to you a while ago that the consideration and manner of payment was left to a certain extent to my discretion, but it must be in accordance with certain lines and policies of the Government, outlined in letter of instructions, a portion of which was read a while ago. I will read one more extract:

"Respecting the disposition to be made of the proceeds arising from the proposed cession, if any be effected, the Department feels that this is a subject requiring most careful and earnest consideration on your part. From ample experience the Department is convinced that cash annuities and the issuance of rations for any extended period of years to Indians is most detrimental to their present and future welfare. Idleness and lack of self-dependence are fostered by the ration and annuity systems, and it is believed that they are one of the great drawbacks to the progress of Indian tribes toward civilization. Any provisions, therefore, in the agreement with the Rosebuds which would enable them to live without putting forth at least as great effort as at present to gain a livelihood would be regarded, necessarily, as a backward step. The Sioux Indians, as a tribe, especially, have the lesson of industry and self-dependence yet to learn. The Rosebud Indians, in the completion of their allotments in severalty, are now entering upon a new era in their tribal history, and it is most important that their future needs, under the changed conditions likely to ensue from their having received such allotments, should be most carefully considered.

"The special needs of the Rosebuds should therefore be inquired into. Their agent should also be consulted. A plan for the disposition of the proceeds should be formulated that will tend to promote the welfare of the Indians and start them

on the road to civilization and self-support. Stock cattle, it is suggested, should be purchased with a portion of the proceeds. The question of irrigation should also be inquired into, and if irrigation be practicable on the reservation provision therefor should be made. The educational needs of the Indians should receive attention, and if any additional facilities are required they should be provided for. The question of providing for the construction of houses and the purchase of additional farm implements, wagons, harness, etc., should also be looked into, and if needed, provision therefor should be made." And here is the principal part of it where they close and draw a line under it. "But the agreement should not provide for the payment of any large sum or sums to the Indians in cash."

Now, to explain a number of points that Reuben's speech has raised, I will say that I could make no provision whatever in the agreement that would interfere with or affect the act of March 2, 1889—that which you call the Crook treaty.

Any agreement that I might enter into with you I would have it very carefully worded, so that your interests would be fully protected. The payment that I would specify in the agreement would be carried out to the letter. In so far as the agreement that we would make is concerned, there would be no question about having it so carefully worded that all the conditions would be fully carried out; but I have no right to go back to former treaties or agreements; that is something outside of my province.

The next question I wish to speak of is the proposition made by Reuben Quick Bear asking for an immediate cash payment of one-half of the consideration and the other half to be deposited in the United States Treasury, and the price demanded by him and some of your other

speakers—\$5 an acre. I wish to say to you very plainly that it would be useless for us to continue in council if you have in view getting \$5 an acre. It would be out of the question; it would be unreasonable, and away beyond anything I could recommend. I would not make an agreement with you that I would not indorse in submitting it to the Department. I would be laughed at in recommending anything involving the amount of money that you ask for your lands.

I have the reputation of being fair and just with the Indians and of having a head upon me that I can make reasonable calculations; and if I sent in an agreement providing for \$5 an acre for the extinguishment of the Indian title to that tract of land, they would think that I had gone insane and call me home to be doctored. I want to do what I can for you people. I have made you a very liberal offer. I am ready to reason with you and explain to you if it requires hours or days, or even weeks; but if you insist upon demanding \$5 an acre, we might as well drop the matter and bring our council to a close.

I have gone upon record, and therefore the Department is on record, by having, through me, offered you \$2.50 per acre for that land, and that is a very liberal price. If you do not see fit to accept this price and the conditions that I offer, I do not see as it is worth while for us to continue to discuss the matter longer.

I am thinking of you all, of what is for your good and welfare, when I wish you to take a portion of the price in stock cattle. Also a small portion of it in building dams and constructing reservoirs upon your reservation, on portions where you have no water for your stock. Also in extending these payments five years instead of giving it to you all at once, for there are only a very few white people that know how to handle money to the best advantage, and that large sum of money placed in your

hands—that is, half the consideration to be paid to you in cash, at one payment, the other half to be placed to your credit in the United States Treasury—the half you would receive in cash would be more of injury than of benefit to a great many of you. It is something that I would not recommend myself; therefore the Department would not approve and Congress would not ratify. I have had in mind your best interests when I have calculated and made you the proposition that I have. To think the matter over well, you had not ought to jump at conclusions. Think it over. Take time to deliberate, but don't close your ears and say "We won't do anything, we won't entertain that proposition." If you consider it well, you can not fail to come to the conclusion that it is a very liberal proposition and that it is to your best interests to dispose of these unallotted lands that are bringing you no returns and from which you are deriving no revenue.

I think a very good way for us to arrive at some conclusion would be for you people to select a committee to represent you and come to the office and see if we can not arrive at some conclusion in drafting an agreement, and, if we reach some conclusion, prepare an agreement and submit it to you people again for ratification. Now I think that it would be well for us to adjourn for a time and you people talk this matter over among yourselves. However, if you still persist in refusing this reasonable proposition, then it is useless for me to remain longer at this agency.

If any of you have anything further to say, I am ready to listen to you; if not, I think it would be well to adjourn the council and you talk over what I have already explained; and I wish that you would consider that suggestion that I have made in regard to appointing a committee. We can then draw up section after section, to meet the wishes of the Indians, such as I know the

Department would be likely to accept and approve, and then we can all meet together and agree to it. As you all know, it requires three out of every four of the Indians—that is, a three-fourths majority—to sign the agreement before it is valid and binding. It means that you have got to be practically all of one mind. I don't know as it is necessary for me to say anything more at this time.

REUBEN QUICK BEAR. You say that if you had a horse to sell, and some one wanted to buy it, you would not need to sell it to him unless he offered you what you wanted for it. You want my land, but if you will not pay what we ask for it you can not have it.

LITTLE CROW. You have come here to buy my land, and I have arisen to say something on that subject. I don't want the price to go above or below \$5 an acre for the land. If we make that treaty, I want half of that money to put into cattle for us and the other half to be paid to us in cash. All of us people down in the lower part of the reservation have herds of sheep, and we can put in those dams and wells. We want you to go back to the Great Father and tell him that we want \$5 an acre for the land and then come back and tell us what he has to say, and then we will be ready to listen to you and make a bargain. Another thing: All that vacant land we would like to hold for our children in the future.

RALPH EAGLE FEATHER. You told us we could make this treaty to suit ourselves. You said that the regular price for land of this kind paid by the Government was \$1.25 an acre, but after you went and seen our land you said that we ought to have more than that.

He Dog and High Hawk have prepared a paper which I will read to you. My friend, you said that whenever a man had a good horse for sale, that the man that owned the horse always had to set the price on the horse. So, my

friend, we have some land for sale, and we have already told you what we ask for it, but you will only give us so much, and you ought to have told us in the first place about the price, and then in our deliberations we would have known what to have done when we met you again to-day.

Inspector McLAUGHLIN. I would like to answer one question before you go on with that. I told you in the beginning that if a man had a good horse to sell or any article for sale, the man that wants to buy generally asks what he holds it at, and the owner should state what he would sell it at. I asked you people to set a price on your land, but you failed to do so when I asked you. I then made an offer, and you after long delay now set your price, for the first time, at \$5 per acre. But the man having a horse to sell is not obliged to take the price offered, neither is the man who wants to buy obliged to pay the price that is wanted by its owner— that is, he is not obliged to accept it at the price, nor is the other party obliged to accept the price offered. It takes two parties to make a bargain. You declined at first to set a price upon the land, and then I made you an offer; and now you come back and demand double the price, and it is unreasonable and could not be entertained by the Government.

RALPH EAGLE FEATHER. We Indians intend to own the land, and have taken it in allotments, just as the President said to take it. We want payment for all vacant land left after that. After that the Indians of future generations can live upon the land and own it—that is, the lands within the diminished reservation, in case Gregory County should be ceded.

From now on the Indians and their children, and the half-breeds and their children, that are capable of holding any position upon the reservation, we want to hold it,

such as the clerk, or harness maker, or blacksmith, or wagon maker, or carpenter, or boss farmer, or tinsmith, just as they are capable of holding them. And after this we don't want even one white man to hold a position that any half-breed or Indian can hold. We have children here that are educated enough to do lots of these things, and they are without employment, and that is the reason I speak of it.

We want allotments for the children that have been born since the Lower Brulé treaty; and there are children 18 years old that have taken their allotments and have not received their pay yet; and people that have taken their allotments and since died, we want their heirs to receive pay.

We do not want any cattle held upon the reservation without our permission.

You ask us Indians to consult about the treaty or agreement. I have decided to charge \$5 an acre and not accept less. And we want all the money to be paid in cash—in installments. We don't want any stock cattle in connection with this affair.

In the treaty of 1889 the Government was to give us 25,000 cows; and out of that we never received but 14,000 head, so we have been waiting to receive the other 11,000 head. And in the treaty of 1868—the treaty to send our children to school— there was no place to send them until 1879, so there is eleven years of school fund that was made no use of; so we want that money so that the children can draw rations from it.

In the Black Hills treaty of 1876 you said that you would feed us Indians as long as we lived; and we are not able to feed ourselves yet, yet you have taken our rations away from us. I want you to give my rations back to me. And if you can not include these demands in the treaty I will not spare even a part of that land. I don't want one

cent to be paid in any other way, but I want all of it to be paid to us in installments.

The first thing after the treaty is ratified we want every person to draw \$100 cash; and after that, every year as long as the money lasts, we want to draw \$20 per head.

We would like to have it so that when anyone wants to transfer from any other agency to this that they can come, and have them bring what they are entitled to and draw their money right out.

Inspector McLAUGHLIN: Regarding the questions raised by Swift Bear, Reuben Quick Bear, and other of your speakers as to the payment of the benefits provided in section 17 of the act of March 2, 1889, to man and wife where the double allotment first issued to the husband has been equally divided between man and wife, or where each have received an equal share when allotted, as provided in your agreement of March 10, 1898. Many of you doubtless remember that when I was here negotiating that agreement with you for the admission of the Lower Brulé Indians to your reservation, in answer to a question asked by Chief Good Voice, I said that under the ruling of the Department there was no question about persons who had reached the age of 18 years being entitled to payment provided for allottees; that under said rulings every person over 18 years of age was entitled to 2 cows, a team of horses, wagon, etc., and \$50 in cash, or that by commuting these articles and giving all cash the amount would be \$241.75, being the commuted amount fixed upon in paying the Santee and Flandreau Indians. This was the ruling of the Department up to the time I held that council with you for admission of the Lower Brulé, and I said to you, in reference to the division of the double allotment to heads of families being divided so as to give husband and wife equal shares, that each allottee being entitled to the benefits provided,

and as husband and wife would each have an allotment, they would each be entitled to the cows, horses, wagon, etc., and \$50 in cash, just the same as if they were separate. That was then my understanding of the matter; and it was a correct answer to the question propounded by Good Voice under the rulings of the Department up to that time.

However, this interpretation of the question was changed by subsequent rulings of the Secretary, and only those who were 18 years of age or over when allotments were authorized, in 1893, are entitled to such payments. This last ruling also excludes women who have received one-half of their husbands' original allotment, or where equal shares have been given to husband and wife in allotments since made, it being held that the act of March 2, 1889, only contemplated such payments to the heads of families and single persons over 18 years of age. I did not misrepresent to you anything in that council, and my answer to the inquiry of Good Voice was as I then understood the question from Department rulings in the premises up to that time. A subsequent ruling, however, excludes the wives and persons under 18 years of age from receiving the articles provided by article 8 of the act of March 2, 1889.

STRANGER HORSE. Look at me. In the last treaty we brought the white men intermarried into the tribe as Indians; I am an Indian, but am asked to speak for that class of people. He said that they could live among the Indians, but must teach them how to own property. They have been with the Indians about twenty years, but the President has not done with the Indians as he agreed to do in the last treaty. The mixed bloods have not learned to hold property, although they have tried to. You said that we had a good horse, and you had come to ask what we would take for it. He is a good horse, that horse of

mine, and so I have left him out there to grow fat. You have asked us what we would take for that horse. Now, I have studied that question all this time, and I am ready to tell you what I will take for him. You have come here expecting to get him at a certain price, but you will help us out and give us a higher price. The half-breeds want me to say that they want \$5 an acre for the land. When I have anything that is fat like that horse, and anybody wants to buy it and I tell him the price, if he don't want to give me that, why it is all right. I knew that the President would not give me the money in cash; that is the reason that I concluded to take half in cattle. Also, in case we make this treaty, I want the children that are born to have title to the vacant lands. Since Crook's treaty there have been children born in this way, and I want them to take allotments, and hold them, and be entitled to them.

Another thing. You told us that as fast as these children became 18 years of age they would draw annuities like the rest of them, but it was laid aside; but now I would like to have you work it up in this treaty so that it would be that way. I also want this treaty to stipulate the division of the allotment between a man and wife, so that each would receive their share. These things I have said to you are the sentiments of the half breeds, who have requested me to express these things to you.

PICKET PIN. There are a great many of the Indians who have already left the council that want \$5 an acre, but I want to see, for my part, that we get that amount if we sell at all.

Inspector McLAUGHLIN. Replying to Ralph Eagle Feather's demand for the discontinuance of whites and the employment of Indians at your agency, you must bear in mind that it requires special qualifications for some of these Government positions and that preference is given to Indians when qualified.

I wish that Indians would seek Government employment less and launch out in some enterprise for themselves. By engaging in business for themselves after leaving school the young men would be more likely to prosper than by filling any ordinary Government position at an Indian agency, and also be more independent. It is seldom that a young man saves any money from his salary when employed at an agency, and he usually leaves the service as poor as when he commenced, while by the same exertion on a farm or in stock raising he might have accumulated considerable property.

I now repeat that I want you to consider the proposition that I have made for the cession of those lands, and return here to-morrow and give me an answer.

If there is no probability of us reaching an agreement it is useless for me to remain any longer, and will therefore leave here next Monday; but if we can reach an agreement I will remain until the necessary signatures are obtained.

This council is now adjourned until to-morrow.

SEPTEMBER 11, 1901.

Council convened at 8 a.m., with about 60 Indians present. Bouis Bordeaux, interpreter.

Inspector MCLAUGHLIN. My friends, you have sent me word that you wish to see me this morning, and I am now very glad to meet you here so early this morning, and any information you wish or any questions you wish to ask I am ready to answer. I know that you are in a hurry to get out to your corral to-day and to reach your homes, and it is very commendable of you calling upon me before leaving for your homes.

I am now ready to listen to what you have to say.

CROW DOG. You came here last spring asking me if I wanted to sell my land, but I told you we would consider the matter, as I did not want to do anything in a hurry. Sometimes white men come here in a surly manner, and with papers with them, and they make us think that we must do as they want us to, because we are ignorant and do not know whether we have to or not, so that we generally do as they want us to do. But my heart is good toward you for what you have said to us. Did you say that if we dispose of this land down near the Missouri River, in Gregory County, it would leave our reservation the same size as Pine Ridge Reservation, or that you would give us that much from the Pine Ridge Reservation?

Inspector MCLAUGHLIN. I said that if you sell that piece of land in Gregory County for which I am negotiating with you, it would leave your reservation about the same size as Pine Ridge Reservation.

CROW DOG. The reason that I ask you about this is because I did not understand. We have decided that we want \$5 an acre for the land. All these people, they have allotments, but their children ought to have this land. The Great Father has begun to take slices of our land from us. I am afraid of that. He has also begun to take off our children's rations. I am afraid of that. I would like to see some of the provisions that were in the former treaties carried out fully before we make any more treaties. I do not know just what it was, but there were things in the former treaties that were not carried out, and after they are carried out, then we will feel more like making another. For my part, I do not want to say a word that would displease you, nor do I want you to say a word to displease me. While I am not a chief or a noted man, yet I know that the Great Father is anxious to know about and cares for his most humble children.

The Great Father gives the children to-day all the opportunities possible to obtain a good education, which will enable them to be more useful and imitate the white men's ways, and I often regret that my early youth was not favored with the opportunities that are afforded the children to-day. The Great Father took a number of our children away to school, and about a hundred of them died there, but that did not fill us with any spirit of resentment. But the benefit they derive from attendance at school, of course, returns to us ultimately. I talked with you on this matter some time ago and to-day, and would be pleased to present my views on any other occasion that you wish to have an expression from us.

HIGH HAWK. We are here talking about this treaty, and you are having it reported and will take a copy of it home with you; and we would like to have you translate it into Indian and give us a copy to take home with us, one for each band of Indians.

In talking here about this treaty yesterday, some of us said one thing and some another, but there was no uniformity or sentiment. Some of the people don't want to sell at all, but I and many others want to sell it if we can get \$5 an acre for the land.

After we get a copy of these proceedings and take it home with us and deliberate upon it a few days, we can come to a decision and return you a definite answer. In regard to the stock cattle which you spoke about buying for us, I know that they would be a good investment, and then those other things—would the money for their purchase have to come out of the proceeds of our land? There are a number of things in the agreement you want to make with us that don't suit me, and about half of our people want to go home and reject your proposition altogether, but the rest of us have decided to stay here awhile yet and help you, and see if we can not come to some agreement.

HE DOG. My friend, I am the man that belonged to Spotted Tail's council; that is the reason that I came here singing yesterday. I will not say much, but the price of the land is \$5 per acre. I came here yesterday and sat there, and did not run away from you, as some of them did, but waited till you got through. If all these people had selected a man to talk to you on this subject with authority, it might have been different altogether. Now, I want those papers that they spoke of to be sent to all the camps.

LITTLE CROW. You will take this that we have been saying home to the Great Father. I see, my friend, that all

these people don't want to sell; but if you will offer them \$5 an acre all the people will come back and be willing to sell the land. If you will go and tell the Great Father what we say, then come and bring us his answer, then we will consider it. In closing I will say that whatever I have said before I stand by now.

LITTLE WOUND. My friend, I am going to talk to you very briefly. The nations are sitting here, and we say \$5 an acre, and we depend upon you for that. Yesterday there were a lot of them that did not want to sell, and I am kind of ashamed of that. Of course, my friend, you have to say \$2.50 per acre, but I believe you will give more than that. I was going to say some other things, but my friend here wants to speak, so I will refrain from further speech.

LANCE. Some of the people are not strong; they are weak; but I am not that way. I would like to have you send the propositions of yours to each camp. Then it will do them good, and their heart will be good, and they will have an opportunity to consider your proposals. Whenever the white men send a man here with kind words for us I like it. That is good, and I will listen to him. I deem it worth while to consider the matter that you have brought before us.

EAGLE HORSE. I just wish to say a few short words. I spoke briefly yesterday, and my people wished me to say again to-day that we want \$5 an acre for the land. What I was afraid of was that you would not offer over \$1.25 an acre, but my people want more than that, so we could not accept that.

Inspector MCLAUGHLIN. I just doubled that, you know.

EAGLE HORSE. We will go home and think over this matter and give you a definite answer later. I am glad that my friends spoke about getting a copy of the proceedings, for we ought to have one of them in each band.

Inspector MCLAUGHLIN. In relation to the papers that you want submitted to you, I will have a number of copies of my proposition written out and submit them to you, which will explain my offer just as I made it to you. I will have them translated into Sioux, so that you can read them in your own language, and will have them ready in a short time.

I am very much pleased with this council this morning and you having called upon me so soon after the council of yesterday, as it shows that you are considering the matter, and it is my desire that you understand everything very fully and clearly before we start in making an agreement, or before I leave here, giving up the work entirely. I wish you to understand everything fully and clearly, and in having this proposition on paper it gives you an opportunity to study and understand it very clearly.

I have told you before that I am here entirely for this one matter, and my time is going to be devoted to it only. While I would like to get through with the business as soon as possible, at the same time I do not wish to hurry you. I will give you all the time that you wish; that is, provided that there is a probability of our entering into an agreement; but if there is no probability of our entering into an agreement, if you have made up your minds to keep your ears closed, it would be useless for me to continue longer. But, as you have requested, I will prepare those papers for each district, so that you may have them and consider the matter; and I hope that you will be able to give me a decisive answer by next Saturday, so that I may know whether it will be an object for me to continue longer or to abandon the work. I received a letter from the Secretary the night before last ordering me to California to purchase lands there from the whites for the location of Indians upon them. The

Indians have no lands there. He wants me to reach there as soon as possible, but he did not want me to hurry, but to finish up here first; and therefore I would like to know whether it is going to be of interest to you people for me to remain longer or say that we will bring this council to a close. So I will prepare the papers and have them ready as soon as possible.

LONG WARRIOR. My friend, the nations here they want something. We have considered your proposition and put down on paper the amount we ask for the land, and that is what we want. Of course, you know that you want it one way and we Indians want it another way. We consider you as a man and we want you to consider us as men. Others have said that they wanted to stand by you in this matter, and I want to say the same. Another thing I wish to say is that in the past whenever a new treaty is made it covers up the old one. I am tired of that.

In Crook's treaty there was something that was forgotten, but I hope that in this treaty that that which was forgotten in that treaty be fixed up in this. In regard to these things you suppose to buy with the \$40,000, we can look into that matter ourselves. The Government has given you power as inspector, and they want you to do all you can to help the Indians. I suppose you think that I am not a man of any importance, and I am not, but still I am a man of my word.

Whenever a man comes here to make a treaty there is no shame about him. He tells lots of lies to us. On that account whatever this nation (the Indians) asks for I wish you would try and get for them. You may consider this a rather small treaty, but to me it is a big one. We hardly ever make a treaty but what there is some trouble about it, but we don't want it to be so with this one.

In regard to those papers which you are going to send out to each band, we thank you for that.

EAGLE PIPE. There is a man sitting here who has come to make a treaty, but we can not make the treaty unless we can come to some conclusion that will be satisfactory to us as well as him.

GEORGE GOOD SHIELD. My friend, the people here have been disputing a few days, but they have come to no conclusion. Now, I always say that if a man says anything, that must go, but if a man says anything bad, that never goes. You all know that in the past in making treaties they always had a heading to it, but in this case now they don't; everything is all mixed up badly.

In the past in making treaties we always got \$1.25 and acre for it, but in making this treaty we ask \$3 an acre for the land, and we will not go any farther than that. So, my friend, we want \$3 an acre for the land, and if you will not pay that there is no use talking about it any more.

GRAY EAGLE TAIL. You came here last spring when we had the smallpox and we did not have much of a council, but now we have come together again for that same thing. But the people are divided in sentiment, and I don't know which way it will go. One thing I want you to see about: When we want anything we send a letter down to Washington, but those small letters the Great Father does now see at all, so that my thoughts does not reach him at all and he does not give us the things we ask for.

I have five sons, and if they were here they would do as I want them to, but they have gone off with a show, and so they can not vote on this question you have brought to us.

RUNS CLOSE TO VILLAGE. Yesterday there was some pulling back by the young men about 18 years old. They said that they had not received their allotments, and there is some hardship yet.

We offer this \$5 merely as a proposition for you to think about. When you speak about making another

treaty, we think about the Black Hills treaty, and are sorry about it. We came here to live, and I can not agree to what you say.

DOG TRAIL. You come here to represent the Secretary. I am a chief, and also a councilman. I am chief for the children, according to the Indian custom. The Great Father has to make laws for the children of this agency. He ought to make a law that there would be only one kind of treatment for the whole people, old and young, upon the reservation. Then the people could come together and be well off if they would make that law for them. We could have sheep and hogs and take up the white man's customs. We ought to have a landmark down by the Missouri River where the reservation ends, and any cattle found on this side of that should belong to the Indians, no matter who they belonged to. If these things are done for us, we will fix things up and have houses, with nice things inside, just as the white man does.

Inspector MCLAUGHLIN. I want to say a word now. This council has been quite a lengthy one, and I am glad that you people seem to begin to consider this matter. I will prepare the papers as I have proposed to and get them out of you as soon as I can; but, as you heard me say in full council yesterday, it would be useless for me to make an agreement that I know would not be approved by the Secretary or ratified by Congress.

The price that you ask, \$5 an acre, is unreasonable and double what the land is worth. My offer to you of \$2.50 an acre is very liberal and full value for those lands. I am glad that there are a certain number of you that look at this in that light, because a very sensible remark came from the sergeant. He said that you were willing to fix the price at \$3 an acre, and that is coming pretty close to an agreement.

Now, when I spoke yesterday about the fence and about building dams in your creeks and building reservoirs, I did not say that that was compulsory at all. I simply suggested that. That is for you to consider. Now, it has been suggested to me since by different parties that a great benefit would accrue to you people by giving you lumber. I would concur in anything of that kind that would be best to incorporate into the agreement.

These are matters for you to consider, and when I give you my proposition upon the paper and the different conditions of the proposed agreement, then you can take it out and consider it and then return to me and we will reach an agreement.

Council convened at 2 p.m., September 14, 1901, with about 200 Indians present. Louis Bordeaux, interpreter.

Inspector MCLAUGHLIN. My friends, from a number of talks that I have had with leading men and other members of your tribe since last Wednesday I have prepared an agreement with the proposition that I made you last Tuesday, which I will read to you. (Reads the agreement.)

I have now read this agreement to you and want to hear what you have to say in regard to it. Your interests are fully protected, and I hope it will meet your approval. This is written in pencil. If it meets your approval, I will have it typewritten in duplicate, leaving one copy at your agency and the other for signatures by you people, which will be forwarded by me.

HIGH HAWK. I wish to speak first in regard to what you say about fence and dams and lumber. Please let us settle that ourselves.

Inspector MCLAUGHLIN. I will answer you now. I first mentioned the fence and dams and reservoirs, but found that there was a great deal of opposition to the fence—that very few of you wanted the fence—and

therefore I dropped that. I compromised with you on that. A number of you suggested lumber, and I thought that was an excellent idea, and I accepted the lumber suggestion and dropped the fence.

HIGH HAWK. We don't want any fence or reservoirs or dams, and, while we want lumber, we would like to get the cash and then buy the lumber ourselves. There is cattle on one side and cash money on the other side. I want it that way, so that we can get part in cash and the remainder in cattle.

I would like to have the \$40,000 be in cash payment, and so that the children born hereafter would be entitled to it and the heirs of those who are dead would be entitled to their share. You promised the lumber to us once, but there was not enough to go around, so only a few got any and it did not do good. Some man will get this money, and he will buy the lumber himself. We have accepted this \$2.50—the four bands of us have agreed to take that. My band agrees to take it and He Dog's band and Bull Nation's band, and the Black Pipe people are only a little ways off. The Cut Meat and Spring Creek districts will sign the agreement first. I have already selected four things to buy to spend my money on.

HE DOG. My friend, we say this: It will be \$2.50 an acre. Four of our bands have agreed to that, and we have done well. You speak about using the \$40,000 to build fences, dams, and reservoirs and to buy windmills and lumber. Lots of our young men are hard up and want that money to buy things they need.

LONG WARRIOR. My friend, my people have selected certain men to speak to you on this matter, and I am one of the number chosen for that purpose.

First, we want this: We want the mixed bloods to stay with us permanently. Second, we want our wives that have taken allotments to be paid the same as the Indian

men. Also there are some 18 years old that have never been paid, and we want them paid. We want the children to get their lands hereafter.

In regard to reservoirs and dams and lumber and fence, we don't want them at all. We want to get the money cash and buy whatever we want. These things which I make mention of we want to have specified in the treaty so that they will be permanent.

BULL NATION. They say that there are four bands that have decided to accept your proposition. I want the treaty to be this way: We don't want fence, dams, reservoir, or lumber, but we want the money in cash. If I receive the money in cash it will be what I want; it will be a benefit to me. This \$40,000 I want to be given us as a cash payment, too. We want the heirs to receive the money for those who have died, and the children born later also to receive their share.

Agent MCCHESENEY. I will say that the money to be expended in dams and reservoirs could not be better expended for any purpose. As you people know, there are six full townships on the eastern portion of your reserve which are not now available for grazing cattle because there is no water on them to support the cattle. If there was water there you could have had cattle there this year under grazing permits, and you would have derived five or six thousand dollars from that source this last year. The Indians living along Butte Creek and White Thunder and Oak Creek complain of the scarcity of water on their allotments. Those streams have gone dry in the past few years, and you have been unable, some of you, to keep your cattle near your homes. Now, if a portion of this \$40,000 was expended in dams along those streams and in those six townships that I have named, and in some other portions of your reserve, I believe that you would have an abundance of water for your stock. As I

said before, I don't believe you could expend that money in a better way than for dams and lumber. You could not put it into anything that would benefit you more, and I would recommend that you consider this matter as well and see if you can not all come to the same conclusion. It is not a large sum of money, and you would not feel it out of your cash payment. A considerable portion of it anyway would go back into your own pockets for work performed on the dams.

STRANGER HORSE. You asked us to be quiet and listen carefully to what you had to read, and we have listened very carefully. But my people do not like that which you have read. I thought you came here for the land and all the power you had was to set the price of the land. We do not know just what to do. We are all mixed up. In regard to those improvements that you and the agent suggest, I want to know if an Indian is going to have the management of building these reservoirs and dams in case we accept that proposition. It has always been that in any work of that kind at the agency the white man gets the big job and the most money and the Indians that work under him get small pay. That is the way it has been done in the past. I did not say our agent did that himself, but the people from the Department at Washington send them here.

We now know that if that is one of the conditions of your proposition that we can not come to any agreement to-day. The Indians have considered certain plans which would be best for them. Now, we want this \$40,000 included in the first cash payment. Now, my friend, my people have agreed to your proposition in every other respect, but we want this \$40,000 given us in cash, and if we can get that we will be willing to accept as low as \$2.50 an acre for the land. If you will make this kind of payment, it will help the young man that is just married.

Inspector MCLAUGHLIN. I supposed that you all understood the proposition, for I reduced it to writing, preparing several of the copies in English and quite a number in Sioux, and sent them out among all the Indians—that is, to the different subissue stations—so you know exactly what my proposition is and have deliberated upon it; and if you have decided upon rejecting, then, of course, I can not help it. That is one of the propositions. The others I see you are satisfied with, and I want you to think further and let me know when I return.

(Inspector McLaughlin then retires from the council chamber for a few minutes, and upon returning resumes the discussion.)

Inspector MCLAUGHLIN. Well, I have returned to receive your answer.

RALPH EAGLE FEATHER. Four bands have counceled, and we have appointed a committee to come here and see you in regard to your proposition.

FRED BIG HORSE. The Indians can build dams and reservoirs themselves where they are needed without any pay; but we want the \$40,000 paid to us in cash.

PICKET PIN. All the people belonging to the Rosebud Indians are here. Whenever the Great Father promises pay, all the people in Rosebud gets that. If you wish this matter to be settled quietly, we want you to go to each station and have a talk with them. This matter has been considered among the Indians and mixed bloods. I never try to pull the people about, for I belong to all the people, and this is for all of them. My friend, you are going to be slow about it; that is good.

Inspector MCLAUGHLIN: My friends. I see that you are determined not to accept that \$40,000 clause that I had prepared in the agreement, I have advanced all the arguments bearing upon it, and your agent has done the

same—arguments that we knew would be for your best interests if they are accepted by you people—and I had relied very largely upon the provision—that \$40,000 clause—to aid me in presenting this matter to the Department so that it would receive Department approval and ratification by Congress, and it is with great reluctance that I drop that section of that particular article; but to let you see that I want to meet you as far as is possible to go I will call that \$40,000 a cash payment to be equalized among the others; that is, making five equal cash payments of \$790,000 instead of \$750,000, as I first proposed. That will give you \$158,000 each payment for five years, a total of \$790,000. Now, does that meet your approval? [Indians indicate approval.] I will read you this Article III of the agreement as it will now stand.

(The inspector reads the amended article.)

Inspector MCLAUGHLIN. Does that meet your approval? [Further indications of approval from Indians.] Well, I will prepare this and have it ready for your signatures.

I certify that the above is a true transcript of the councils held as above stated.

V. A. HOLBROOK,
Assistant Clerk. italics,

ROSEBUD AGENCY, S. DAK., *September 21, 1901.*

This agreement made and entered into on the fourteenth day of September, nineteen hundred and one, by and between James McLaughlin, United States Indian Inspector, on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:
ARTICLE I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the considera-

tion hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one, north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating four hundred and sixteen thousand (426,000) acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

ART. II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement, the United States stipulates and agrees to expend for and pay to said Indians, in the matter hereinafter provided, the sum of one million and forty thousand (1,040,000) dollars.

ART. III. It is agreed that of the amount to be expended for and paid to said Indians, as stipulated in Article II of this agreement, the sum of two hundred and fifty thousand (250,000) dollars shall be expended in the purchase of stock cattle of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls for issue to said Indians, to be distributed as equally as possible among men, women,

and children as soon as practicable after the ratification of this agreement, and that the sum of seven hundred and ninety thousand (790,000) dollars shall be paid to said Indians per capita, in cash, in five annual installments of one hundred and fifty-eight thousand (158,000) dollars each, the first of which cash payments shall be made within four months after the ratification of this agreement.

ART. IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation, and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon not inconsistent with existing statutes.

ART. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

ART. VI. This agreement shall take effect and be in force when signed by United States Indian Inspector James McLaughlin and by three-fourth of the male adult Indians, parties hereto, and when accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, United States Indian Inspector, on the part of the United States,

and the male adult Indians belonging to the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at Rosebud Indian Agency, South Dakota, this fourteenth day of September, A.D. nineteen hundred and one.

JAMES MCLAUGHLIN,
United States Indian Inspector.

No.	Mark.	Age.	No.	Mark.	Age.
1	He Dog	x 65	55	Wm. Neck	x 26
2	High Hawk	x 50	56	Little Thunder	x 50
3	Black Bird	x 32	57	Frank Little Thunder	x 21
4	Wm. J. Barker	x 32	58	Never Miss a Shot	x 50
5	Picket Pin	x 30	59	Whipple Never Miss a Shot	x 22
6	Running Horse	x 16	60	Bear in the Woods No. 2	x 43
7	Picket Pin Charles	x 32	61	Joseph Fire Heart	x 18
8	Henry Fast Bull	x 26	62	Eagle Thunder	x 70
9	Feather Man	x 35	63	Black Ring	x 50
10	Hand	x 29	64	Poor	x 46
11	Peter Bear Cat	x 21	65	George Black Ring	x 39
12	Ring Cloud	x 27	66	White Blackbird	x 59
13	William Picket Pin	x 68	67	Raymond Stuart	x 34
14	Bear in the Woods	x 32	68	Stands on the Island	x 64
15	William Eagle Thunder	x 34	69	Running Horse	x 36
16	George Hills	x 32	70	Benjamin Running Horse	x 29
17	John Yellow Elk	x 26	71	Fred Hagerse	x 38
18	Eagle Man No. 1	x 46	72	Ear Ring	x 49
19	John Eagle Hawk	x 53	73	Yellow Thunder	x 44
20	Good Shield	x 32	74	Dog Trail	x 43
21	James Bearman	x 51	75	Two Lance	x 71
22	William Swimmer	x 34	76	Coffee	x 19
23	Black Bear	x 56	77	Lost His Blanket	x 39
24	Sharp Fish	x 19	78	Walter Bites as he Snaks	x 67
25	Martin Sharp Fish	x 51	79	Little Crow	x 54
26	High Bald Eagle	x 47	80	Lance	x 49
27	George Stead	x 24	81	Tools	x 39
28	Moses White Turtle	x 19	82	Joseph Little Brave	x 52
29	Robert He Dog	x 31	83	Wolf Guts	x 31
30	Black Spotted Horse	x 18	84	Bull Nation	x 25
31	Charles Good Shield	x 18	85	Joseph Larvie	x 29
32	Frederick Good Shield	x 21	86	James Runs Close to Vil- lage	x 41
33	Allen Good Shield	x 42	87	Richard Larvie	x 34
34	Hunts Horses	x 18	88	Sweet House	x 31
35	Ernest Swimmer	x 35	89	Running Bear	x 27
36	Little Sack	x 41	90	Leading Fighter	x 72
37	Bull Bat	x 54	91	Arrow Side	x 18
38	Chasing Hawk No. 2	x 32	92	White Horse	x 39
39	King Man	x 78	93	Clark Little Thunder	x 12
40	At the Straight	x 26	94	Two Teeth	x 73
41	Wolf Hide	x 66	95	Arm	x 28
42	Black Elk	x 29	96	Moccasin	x 61
43	Thigh	x 19	97	Let Them Have Enough	x 39
44	Fred Ashley	x 30	98	Smashed Ice	x 56
45	Alex Whipple	x 53	99	Crow Dog	x 21
46	Spotted Elk	x 51	100	His Horse Chasing	x 55
47	Porcupine	x 18	101	Avenger Bull Nation	x 37
48	Big Crow	x 25	102	Little	x 77
49	Henry Big Crow	x 18	103	Brave Hawk	x 23
50	Harry Charge on Him	x 21	104	White Thunder	x 26
51	John Runs Close to Edge	x 41	105	Charles White Thunder	x 21
52	Louis Eagle Hawk	x 27	106	Red Thunder	x 21
53	Ralph Eagle Feather	x 27	107	James White Face	x 21
54	Samuel Bordenax	x 27			

No.	Mark.	Age.	No.	Mark.	Age.
108	Good Kill	x 36	178	Two Hawk	x 50
109	Amos Moccasin	x 39	179	Crow Eagle	x 58
110	Horse Good Voice	x 47	180	Dog Eye	x 10
111	Silas P. Walker	x 53	181	Six Toes	x 61
112	Amos Walker	x 23	182	Six Toes Joseph	x 29
113	Little Wound	x 54	183	Henry Charging Bear	x 26
114	Oliver Little Wound	x 22	184	Charging Bear	x 54
115	Good Elk No. 1	x 28	185	William Charging Bear	x 24
116	Little Bald Eagle	x 56	186	Rex Charging Bear	x 22
117	Samuel Little Bald Eagle	x 24	187	Hugh Charging Bear	x 29
118	White Eagle	x 27	188	Stephen Murray	x 40
119	Bad Hand	x 41	189	Wooden Ring	x 39
120	Leader	x 32	190	Charles Owns the Battle	x 50
121	James Smashed Ice	x 18	191	Eagle Horse	x 41
122	One Butte	x 63	192	Thomas Larvie	x 38
123	Howard One Butte	x 20	193	Hawk Ghost	x 34
124	Runs Reckless	x 34	194	Little Knife	x 46
125	Bull Eater	x 34	195	White Crane Walking	x 62
126	Julian Fire Heart Bear	x 38	196	James Red Weasel	x 19
127	Fire Heart	x 74	197	Shook at Hail	x 19
128	War Bonnet	x 31	198	Eagle Horse No. 1	x 52
129	Joseph Owl Eagle	x 27	199	Owl Eagle	x 57
130	Paul Sitting Bear	x 25	200	Ugly Wild Horse	x 50
131	Sitting Bear	x 65	201	Crow Head	x 68
132	Crow	x 47	202	Peter Thompson	x 24
133	Walter Leads His Horse	x 21	203	Crow Eagle	x 48
134	Richard Night Chase	x 39	204	Bear Shirt	x 48
135	Gilbert Little Chief	x 30	205	White Buffalo Chief	x 43
136	James Little Chief	x 27	206	Samuel White Buffalo Chief	x 18
137	Walking Bull	x 31	207	Stands By Them	x 16
138	James White Turtle	x 21	208	Win Bear	x 35
139	Edward Face Darkling	x 26	209	Eagle Wolf	x 51
140	Walking Soldier	x 37	210	Silas Light in the Lodge	x 24
141	Elk	x 32	211	Leads Horse	x 54
142	Runs Over Them	x 34	212	Andrew Long Warrior	x 29
143	Lone Elk	x 49	213	Black Bull	x 21
144	Paul Lone Elk	x 23	214	William Black Bull	x 24
145	George Lone Elk	x 45	215	No Eyes	x 18
146	Lone Dog	x 36	216	Long Necked Yankton	x 50
147	White Face Woman	x 39	217	Silas Kutepi	x 29
148	Star Boy	x 26	218	Short Name	x 82
149	Lee Black Crow	x 18	219	Charles Castaway	x 21
150	Black Mountain Sheep	x 36	220	Shoot at Him	x 54
151	Black Hawk	x 32	221	Comes From Among	x 37
152	Black Moon	x 45	222	Makes Good	x 50
153	Daniel Comes from War	x 26	223	Samuel Makes Good	x 21
154	Without a Bow	x 50	224	Comes Out Bull	x 44
155	William Little Elk	x 23	225	Woods Father	x 31
156	Joseph Good	x 43	226	Zander Big Crow	x 25
157	Grabbing Bear	x 29	227	White Turtle	x 65
158	Harry Little Tail	x 44	228	Alex Larvie	x 41
159	Howard Little Tail	x 18	229	Plenty Bull	x 48
160	Luther Little Tail	x 19	230	Kills In Sight	x 55
161	Jacob Standing Bull	x 21	231	Good Fox	x 50
162	Plenty Horses	x 54	232	Not Stampede	x 48
163	Donald Eagle Hawk	x 22	233	Good Boy	x 21
164	Sack	x 50	234	Crow Good Voice	x 16
165	Sleeping Bear	x 51	235	Brave Bird	x 21
166	Frank Sleeping Bear	x 21	236	Brave Bear	x 21
167	Eagle Deer	x 53	237	Charles White Thunder	x 37
168	Charging Cat	x 50	238	Half Medicine	x 61
169	Scott Charging Cat	x 29	239	Harry Hall Medicine (Pipe)	x 18
170	Owns the Battle	x 39	240	David Jumping Elk	x 21
171	Amos Wooden Knife	x 41	241	Levi Eagle Chief	x 61
172	Wooden Knife	x 61	242	Jumping Elk	x 43
173	Bull Dog	x 71	243	Beaver	x 42
174	Leslie Wood Knife	x 29	244	Kills Last	x 37
175	Runs Close to Village	x 51	245	White Bird Johnny	x 29
176	Jonah Runs Close to Vil- lage	x 21	246	Medicine	x 49
177	Joseph Runs Close to Vil- lage	x 23	247	Pup	x 49

No.	Mark.	Age.	No.	Mark.	Age.
218	X	63	339	X	31
219	X	36	340	X	62
220	X	54	341	X	65
221	X	34	342	X	20
222	X	60	343	X	15
223	X	31	344	X	40
224	X	31	345	X	32
225	X	25	346	X	31
226	X	20	347	X	31
227	X	22	348	X	22
228	X	22	349	X	22
229	X	22	350	X	22
230	X	22	351	X	22
231	X	22	352	X	22
232	X	22	353	X	22
233	X	22	354	X	22
234	X	22	355	X	22
235	X	22	356	X	22
236	X	22	357	X	22
237	X	22	358	X	22
238	X	22	359	X	22
239	X	22	360	X	22
240	X	22	361	X	22
241	X	22	362	X	22
242	X	22	363	X	22
243	X	22	364	X	22
244	X	22	365	X	22
245	X	22	366	X	22
246	X	22	367	X	22
247	X	22	368	X	22
248	X	22	369	X	22
249	X	22	370	X	22
250	X	22	371	X	22
251	X	22	372	X	22
252	X	22	373	X	22
253	X	22	374	X	22
254	X	22	375	X	22
255	X	22	376	X	22
256	X	22	377	X	22
257	X	22	378	X	22
258	X	22	379	X	22
259	X	22	380	X	22
260	X	22	381	X	22
261	X	22	382	X	22
262	X	22	383	X	22
263	X	22	384	X	22
264	X	22	385	X	22
265	X	22	386	X	22
266	X	22	387	X	22
267	X	22	388	X	22
268	X	22	389	X	22
269	X	22	390	X	22
270	X	22	391	X	22
271	X	22	392	X	22
272	X	22	393	X	22
273	X	22	394	X	22
274	X	22	395	X	22
275	X	22	396	X	22
276	X	22	397	X	22
277	X	22	398	X	22
278	X	22	399	X	22
279	X	22	400	X	22
280	X	22	401	X	22
281	X	22	402	X	22
282	X	22	403	X	22
283	X	22	404	X	22
284	X	22	405	X	22
285	X	22	406	X	22
286	X	22	407	X	22
287	X	22	408	X	22
288	X	22	409	X	22
289	X	22	410	X	22
290	X	22	411	X	22
291	X	22	412	X	22
292	X	22	413	X	22
293	X	22	414	X	22
294	X	22	415	X	22
295	X	22	416	X	22
296	X	22	417	X	22
297	X	22	418	X	22
298	X	22	419	X	22
299	X	22	420	X	22
300	X	22	421	X	22
301	X	22	422	X	22
302	X	22	423	X	22
303	X	22	424	X	22
304	X	22	425	X	22
305	X	22	426	X	22
306	X	22	427	X	22
307	X	22	428	X	22
308	X	22	429	X	22
309	X	22	430	X	22
310	X	22	431	X	22
311	X	22	432	X	22
312	X	22	433	X	22
313	X	22	434	X	22
314	X	22	435	X	22
315	X	22	436	X	22
316	X	22	437	X	22
317	X	22	438	X	22
318	X	22	439	X	22
319	X	22	440	X	22

No.	Mark.	Age.	No.	Mark.	Age.
282	X	19	464	X	31
283	X	19	465	X	31
284	X	19	466	X	31
285	X	19	467	X	31
286	X	19	468	X	31
287	X	19	469	X	31
288	X	19	470	X	31
289	X	19	471	X	31
290	X	19	472	X	31
291	X	19	473	X	31
292	X	19	474	X	31
293	X	19	475	X	31
294	X	19	476	X	31
295	X	19	477	X	31
296	X	19	478	X	31
297	X	19	479	X	31
298	X	19	480	X	31
299	X	19	481	X	31
300	X	19	482	X	31
301	X	19	483	X	31
302	X	19	484	X	31
303	X	19	485	X	31
304	X	19	486	X	31
305	X	19	487	X	31
306	X	19	488	X	31
307	X	19	489	X	31
308	X	19	490	X	31
309	X	19	491	X	31
310	X	19	492	X	31
311	X	19	493	X	31
312	X	19	494	X	31
313	X	19	495	X	31
314	X	19	496	X	31
315	X	19	497	X	31
316	X	19	498	X	31
317	X	19	499	X	31
318	X	19	500	X	31
319	X	19	501	X	31
320	X	19	502	X	31
321	X	19	503	X	31
322	X	19	504	X	31
323	X	19	505	X	31
324	X	19	506	X	31
325	X	19	507	X	31
326	X	19	508	X	31
327	X	19	509	X	31
328	X	19	510	X	31
329	X	19	511	X	31
330	X	19	512	X	31
331	X	19	513	X	31
332	X	19	514	X	31
333	X	19	515	X	31
334	X	19	516	X	31
335	X	19	517	X	31
336	X	19	518	X	31
337	X	19	519	X	31
338	X	19	520	X	31
339	X	19	521	X	31
340	X	19	522	X	31
341	X	19	523	X	31
342	X	19	524	X	31
343	X	19	525	X	31
344	X	19	526	X	31
345	X	19	527	X	31
346	X	19	528	X	31
347	X	19	529	X	31
348	X	19	530	X	31
349	X	19	531	X	31
350	X	19	532	X	31
351	X	19	533	X	31
352	X	19	534	X	31
353	X	19	535	X	31
354	X	19	536	X	31
355	X	19	537	X	31
356	X	19	538	X	31
357	X	19	539	X	31
358	X	19	540	X	31
359	X	19	541	X	31
360	X	19	542	X	31
361	X	19	543	X	31
362	X	19	544	X	31
363	X	19	545	X	31
364	X	19	546	X	31
365	X	19	547	X	31
366	X	19	548	X	31
367	X	19	549	X	31
368	X	19	550	X	31
369	X	19	551	X	31
370	X	19	552	X	31
371	X	19	553	X	31
372	X	19	554	X	31
373	X	19	555	X	31
374	X	19	556	X	31
375	X	19	557	X	31
376	X	19	558	X	31
377	X	19	559	X	31
378	X	19	560	X	31
379	X	19	561	X	31
380	X	19	562	X	31
381	X	19	563	X	31
382	X	19	564	X	31
383	X	19	565	X	31
384	X	19	566	X	31
385	X	19	567	X	31
386	X	19	568	X	31
387	X	19	569	X	31
388	X	19	570	X	31
389	X	19	571	X	31
390	X	19	572	X	31
391	X	19	573	X	31
392	X	19	574	X	31
393	X	19	575	X	31
394	X	19	576	X	31
395	X	19	577	X	31
396	X	19	578	X	31
397	X	19	579	X	31
398	X	19	580	X	31
399	X	19	581	X	31
400	X	19	582	X	31
401	X	19	583	X	31
402	X	19	584	X	31
403	X	19	585	X	31
404	X	19	586	X	31
405	X	19	587	X	31
406	X	19	588	X	31
407	X	19	589	X	31
408	X	19	590	X	31
409	X	19	591	X	31
410	X	19	592	X	31
411	X	19	593	X	31
412	X	19	594	X	31
413	X	19	595	X	31
414	X	19	596	X	31
415	X	19	597	X	31
416	X	19	598	X	31
417	X	19	599	X	31
418	X	19	600	X	31

No.	Mark.	Age.	No.	Mark.	Age.
535			624		
536			625		
537			626		
538			627		
539			628		
540			629		
541			630		
542			631		
543			632		
544			633		
545			634		
546			635		
547			636		
548			637		
549			638		
550			639		
551			640		
552			641		
553			642		
554			643		
555			644		
556			645		
557			646		
558			647		
559			648		
560			649		
561			650		
562			651		
563			652		
564			653		
565			654		
566			655		
567			656		
568			657		
569			658		
570			659		
571			660		
572			661		
573			662		
574			663		
575			664		
576			665		
577			666		
578			667		
579			668		
580			669		
581			670		
582			671		
583			672		
584			673		
585			674		
586			675		
587			676		
588			677		
589			678		
590			679		
591			680		
592			681		
593			682		
594			683		
595			684		
596			685		
597			686		
598			687		
599			688		
600			689		
601			690		
602			691		
603			692		
604			693		
605			694		
606			695		
607			696		
608			697		
609			698		
610			699		
611			700		
612			701		
613			702		
614			703		
615			704		
616			705		
617			706		
618			707		
619			708		
620			709		
621			710		
622			711		
623			712		
624			713		
625			714		
626			715		
627			716		
628			717		
629			718		
630			719		
631			720		
632			721		
633			722		
634			723		
635			724		
636			725		
637			726		
638			727		
639			728		
640			729		
641			730		
642			731		
643			732		
644			733		
645			734		
646			735		
647			736		
648			737		
649			738		
650			739		
651			740		
652			741		
653			742		
654			743		
655			744		
656			745		
657			746		
658			747		
659			748		
660			749		
661			750		
662			751		
663			752		
664			753		
665			754		
666			755		
667			756		
668			757		
669			758		
670			759		
671			760		
672			761		
673			762		
674			763		
675			764		
676			765		
677			766		
678			767		
679			768		
680			769		
681			770		
682			771		
683			772		
684			773		
685			774		
686			775		
687			776		
688			777		
689			778		
690			779		
691			780		
692			781		
693			782		
694			783		
695			784		
696			785		
697			786		
698			787		
699			788		
700			789		
701			790		
702			791		
703			792		
704			793		
705			794		
706			795		
707			796		
708			797		
709			798		
710			799		
711			800		
712			801		
713			802		
714			803		
715			804		
716			805		
717			806		
718			807		
719			808		
720			809		
721			810		
722			811		
723			812		
724			813		
725			814		
726			815		
727			816		
728			817		
729			818		
730			819		
731			820		
732			821		
733			822		
734			823		
735			824		
736			825		
737			826		
738			827		
739			828		
740			829		
741			830		
742			831		
743			832		
744			833		
745			834		
746			835		
747			836		
748			837		
749			838		
750			839		
751			840		
752			841		
753			842		
754			843		
755			844		
756			845		
757			846		
758			847		
759			848		
760			849		
761			850		
762			851		
763			852		
764			853		
765			854		
766			855		
767			856		
768			857		
769			858		
770			859		
771			860		
772			861		
773			862		
774			863		
775			864		
776			865		
777			866		
778			867		
779			868		
780			869		
781			870		
782			871		
783			872		
784			873		
785			874		
786			875		
787			876		
788			877		
789			878		
790			879		
791			880		
792			881		
793			882		
794			883		
795			884		
796			885		
797			886		
798			887		
799			888		
800			889		
801			890		
802			891		
803			892		
804			893		
805			894		
806			895		
807			896		
808			897		
809			898		
810			899		
811			900		

No.	Mark.	Age.	No.	Mark.	Age.
656			747		
657			748		
658			749		
659			750		
660			751		
661			752		
662			753		
663			754		
664			755		
665			756		
666			757		
667			758		
668			759		
669			760		
670			761		
671			762		
672			763		
673			764		
674			765		
675			766		
676			767		
677			768		
678			769		
679			770		
680			771		
681			772		
682			773		
683			774		
684			775		
685			776		
686			777		
687			778		
688			779		
689			780		
690			781		
691			782		
692			783		
693			784		
694			785		
695			786		
696			787		
697			788		
698			789		
699			790		
700			791		
701			792		
702			793		
703			794		
704			795		
705			796		
706			797		
707			798		

No.	Mark	Age	No.	Mark	Age
818	Slow Thunder	X	887	Bone Shirt, Jr.	X
819	James Guerne	X	888	Stampede	X
820	Thomas Bridgman	X	889	Iron Truck	X
821	John Cordier, Jr.	X	890	Eugene Little	X
822	Charles Cordier	X	891	Jesse Eagle Elk	X
823	Charles Campbell	X	892	William Thunderhawk	X
824	Henry Iott	X	893	Four Feather	X
825	Apple	X	894	Black Spotted Horse	X
826	David Bearhead	X	895	Joseph Little Hawk	X
827	William P. Makes Noise in Woods	X	896	Henry Horse Looking	X
828	Paul Light	X	897	Bear Horse	X
829	Bad Gun	X	898	Morris Walker	X
830	Peter Greenwood	X	899	James Small Bear	X
831	Four Horns	X	900	Bobtail Bear	X
832	Little Horns	X	901	Lawrence Cotten	X
833	Frank Four Horns	X	902	Charles Tall Woman	X
834	Stephen Walking Eagle	X	903	George Giroux	X
835	Benny	X	904	Two Charger	X
836	Nosy Owl	X	905	Goes to War	X
837	Goes Among Arrows	X	906	Swimming Skunk	X
838	Hugo Hollow Horn Eagle	X	907	Jack Bear Looks Behind	X
839	Lame Dog Peter	X	908	Daniel Hollow Horn Bear	X
840	Oliver Eagle Feather	X	909	Henry Hollow Horn Bear	X
841	Red Tomahawk Thomas	X	910	John Hollow Horn Bear	X
842	Kills Enemy	X	911	Sunday	X
843	Little Soldier Joseph	X	912	David Eastman	X
844	Louis Metcalfe	X	913	Stone Arrow	X
845	William Bridgman	X	914	Francis Stone Arrow	X
846	James Two Horse	X	915	Joseph Turgeon	X
847	Frank Growling Running Bear	X	916	Samuel Emery	X
848	John Grabbing Bear	X	917	Thomas Scissous	X
849	Amos Prairie Dog	X	918	John Douville	X
850	Makes Room for Them, Martin	X	919	Henry Hudson	X
851	Emil Head	X	920	Noble Lunderman	X
852	Lee Spotted Calf	X	921	Charles Lunderman	X
853	Iron Boy Edward	X	922	Foster Thunder Hawk	X
854	Charles White Hat	X	923	White Shoulder	X
855	James Stead	X	924	Paul May	X
856	Running	X	925	Two Nation Silas	X
857	Ernest Running	X	926	David Two Nation	X
858	Grease	X	927	Ring Bull	X
859	Flying Above	X	928	Yellow Horse	X
860	Iron Nest Paul	X	929	James Take Him Off	X
861	Felix Little Hawk	X	930	James Black Bonnet	X
862	Oliver Yellow Hair	X	931	Isadore Gunhammer	X
863	Boat Nail	X	932	Snow Fly	X
864	Bernard Boat Nail	X	933	William Greyhound	X
865	Fast Dog No. 1	X	934	James Roberts	X
866	Charles Crazy Cat	X	935	Paul Afraid of Bear	X
867	Lays on his Belly	X	936	Left Hand Bull	X
868	Looks Good	X	937	Solomon Old Lodge	X
869	Tail Face	X	938	Willus Pretty Voice Hawk	X
870	Francis Roast	X	939	Joseph Thunder	X
871	Red Star	X	940	Samuel Forked Tail	X
872	Mule Head	X	941	James Stoneman	X
873	Alex Long Pumpkin	X	942	John King	X
874	Long Pumpkin	X	943	Edward Long Crow	X
875	Fire Thunder	X	944	Edward Crooked Foot	X
876	John High Shield	X	945	Samuel No Moccasins	X
877	Jesse White Latex	X	946	Henry Hair	X
878	Joseph White Latex	X	947	White Whirlwind	X
879	White Latex	X	948	Curtis Forked Tail	X
880	No Water	X	949	Joshua Good Eagle	X
881	Shorty	X	950	John Gasman	X
882	Marshal Bad Milk	X	951	Moses Elk Whistle	X
883	Red Feather	X	952	Standing Cloud	X
884	James Sky Bull	X	953	Rising Dust	X
885	Sky Bull	X	954	Abraham Turgeon	X
886	Leading Horse	X	955	Black Jumper	X
			956	Dallas Shaw	X
			957	Herman Crooked Foot	X
			958	Plum Man	X

No.	Mark	Age	No.	Mark	Age
959	Henry Thin Elk	X	1007	Adam Timber on the Bank	X
960	Two Eagle	X	1008	King Thunder	X
961	Night Shield	X	1009	John Red Tomahawk	X
962	Broken Leg	X	1010	Owens the Battle	X
963	Chester Broken Leg	X	1011	Slow Eagle	X
964	James Broken Leg	X	1012	Six Shooter	X
965	Doctor	X	1013	Henry Turning Bear	X
966	Under the Water	X	1014	Split White Blanket	X
967	Allen Broken Leg	X	1015	Tall Mandan	X
968	John Elk Looks Back	X	1016	Hurry Fling Horse	X
969	Elk Looks Back	X	1017	Benjamin Hungry	X
970	Buffalo Eater	X	1018	Alex Turning Hawk	X
971	Big Corn	X	1019	Ring	X
972	John Shooting Cat	X	1020	Hungry	X
973	Young Iron Shell	X	1021	James McCloskey	X
974	Frank Iron Shell	X	1022	Charles Blair	X
975	William Iron Shell	X	1023	Peter Decory	X
976	Dog Owner	X	1024	Benjamin Decory	X
977	Louis Dog Owner	X	1025	Alphonse N. Charbonneau	X
978	Daniel Roan Horse	X	1026	Paul A. Charbonneau	X
979	Brave Bird	X	1027	John Decory	X
980	Bear Dog	X	1028	John Cordier, sr.	X
981	Yellow Water	X	1029	Paul Didier	X
982	John Bird Necklace	X	1030	Louis Dutton	X
983	Kills Him Alice	X	1031	James Schwagman	X
984	August Shield Him	X	1032	William Stroup	X
985	Aloysius Brown	X	1033	John Yellow Wolf	X
986	George Walking Eagle	X	1034	Henry Quick Bear	X
987	John Walking Eagle	X	1035	Bear Shield	X
988	Walking Eagle	X	1036	James Bear Shield	X
989	Sear Tail	X	1037	Albert Crazy Bear	X
990	Whirlwind Bear	X	1038	Looking White	X
991	Titus Scout	X	1039	Spotted Owl	X
992	John Colombe	X	1040	Yellow Hair Bear	X
993	Christopher Colombe	X	1041	Point at Him	X
994	Edward Colombe	X			
995	George McCloskey	X			

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Agency, S. Dak.; that it was fully understood by them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

WILLIAM BORDEAUX,
Official Interpreter.
WM. F. SCHMIDT,
Special Interpreter.

ROSEBUD AGENCY, S. DAK., *October 4, 1901.*

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and the 1,031 Indians of the Rosebud Agency, S. Dak., to the foregoing agreement.

FRANK MULLEN,
Agency Clerk.

C. H. BENNETT,
Farmer, Cut Meat District.

JOHN SULLIVAN,
Farmer, Black Pipe District.

FRANK ROBINSON,
Farmer, Little White River District.

FRANK SYPAL,
Farmer, Butte Creek District.

ISAAC BETTELYOUN,
Farmer, Big White River District.

JAMES A. MCCORKLE,
Farmer, Ponca District.

LOUIS BORDEAUX,
Ex-Farmer, Agency District.

ROSEBUD AGENCY, S. DAK., *October 4, 1901.*

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, S. Dak., is 1,359, of whom 1,031 have signed the foregoing agreement, being 12 more than three-fourths of the male adult Indians of the Rosebud Reservation, S. Dak.

CHAS. E. MCCHESENEY,
United States Indian Agent.

ROSEBUD AGENCY, S. DAK., *October 4, 1901.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,

Washington, November 23, 1901.

SIR: The office has the honor to acknowledge the receipt of a letter dated October 11, 1901, from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement dated September 11, 1901, with the Indians of the Rosebud Reservation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to that end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the lands opened up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a

United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 19, 1901, a draft of instructions was prepared by this office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the Department on March 21, 1901, and Inspector McLaughlin detailed for the duty of conducting negotiations.

In his report dated October 5, 1901, the inspector states that he arrived at the Rosebud Agency on April 2, 1901, for the purpose of entering upon negotiations with the Indians, and that upon his arrival it was ascertained that smallpox was prevalent on the reservation, wherefore he deemed it advisable to assemble the Indians in general council. He states, however, that he made a trip to the Ponca Creek district, which is in Gregory County, about 100 miles east of the agency, for the purpose of conferring with the Indians there who would be the most affected by the cession, and for the purpose of traveling over that portion of the reserve and securing a knowledge of the lands whose cession it was proposed to secure.

Negotiations having been postponed at that time, with the approval of the Department, the inspector states that he proceeded to carry out orders elsewhere, and returned to the Rosebud Agency on August 28 last and at once entered upon negotiations which, though somewhat protracted and at times discouraging, he says have been satisfactorily concluded.

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between town-

ships 73 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men therefore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existing statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agree-

ments not inconsistent with the provisions of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated September 14, 1901, and contains the signatures of James McLaughlin, United States Indian inspector, and of 1,031 male adult Indians of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement to the effect that the provisions thereof were fully explained by them to the Indians in open council, that it was fully understood by them before signing, and that the signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Another certificate is attached to the agreement, dated October 4, 1901, by Frank Mullen, agency clerk, and by C. H. Bennett, John Sullivan, Frank Robinson, Frank Sypal, Isaac Bettelyoun, and James A. McCorkle, farmers of the several districts of the reservation, and Louis Bordeaux, ex-farmer of the agency district, to the effect that they witnessed the signatures of United States Indian Inspector McLaughlin and of the 1,031 Indians of the Rosebud Agency to the agreement.

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three-fourths of the male adult population of the reservation.

Respecting the terms of the cession, Inspector McLaughlin states in his report that he was greatly handicapped in the beginning by the fact that most of the

Indians who favored a cession at all held the lands at an enormous price—from \$7 to \$15 per acre; that only a very few expressed their willingness to accept as low as \$5 per acre, and this in cash and all in one payment; that upon his arrival all the white men connected with the agency, as well as those of the surrounding country with whom he talked, held the lands in question as worth \$5 per acre; that it appeared that adjacent lands in Gregory County and in Hoyt County, Nebr., were selling at from \$5 to \$10 per acre; that a syndicate of cattle men in Sioux City, Iowa, expressed its willingness to pay \$5 per acre for the entire tract, and that these current rumors and fictitious values placed upon the lands which were circulated among the Indians exercised them very much and had to be overcome by reasoning, which required time and a great amount of patience.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that whilst he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased, whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached.

The inspector refers to the minutes of the council proceedings transmitted with his report as showing the numerous questions raised by the Indians and his answers to their contentions; also, as showing that he finally convinced a number of the leading men of the wisdom of cooperating with him in formulating an agreement.

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land, and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek Day School, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 398.67 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years will aid the Indians materially in providing for their family needs during that time, after which the matured cattle, the increase from the stock issued to them, will be marketable and will with proper care give them an annual revenue thereafter. The inspector states that he was very desirous of having the agreement provide

for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indians accept such provisions, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could not be made. The Indians insisted for a long time upon having the entire \$790,000 paid to them in cash in one payment; but the inspector says he finally succeeded in getting their consent to its payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

The inspector transmits with his report a map, prepared by Special Allotting Agent W. A. Winder, of the portion of the reservation proposed to be ceded, which shows the several Indian allotments therein, with the names of the allottees, and also the unallotted portions; also a package of correspondence had with the State authorities of South Dakota relative to the boundaries of Gregory County, and the description of the eastern portion of the reservation.

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement.

The agreement appears to be properly executed and in form for acceptance and ratification by Congress. It is deemed proper in this connection to refer especially to the provisions of article 4, which are evidently intended to fix the status of mixed-blood Indians upon that reservation, and to insure the undisturbed residence thereon of white men intermarried with the Indians. It does not appear that this provision extends to mixed-bloods as a class any rights or benefits that they did not have before, unless possibly to secure rights to children born of a marriage since the enactment of the provision contained in the Indian appropriation act of June 7, 1897 (30 Stat. p. 62), which reads as follows:

That all children born of a marriage heretofore solemnized between a white man and Indian woman by blood and not by adoption, where said Indian woman is at this time, or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, and as any other member of the tribe, and no prior act of Congress shall be construed as to bar such child of such right.

Respecting the residence of white men intermarried with Indian women, it may be proper to state that this right has always been extended in such cases and permitted so long as the conduct of such white men on the reservation is not detrimental to the peace and welfare of the Indians. The office sees no serious objection to the embodiment of this article in the agreement.

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this office and from the best information obtainable, fair and reasonable. Although it might have been better to

have the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in case.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the amount necessary to carry the provisions of articles 2 and 3 of the agreement into effect.

The matter of the disposition of the land ceded is one properly for the Department and the Commissioner of the General Land Office to arrange. It is suggested that such disposition may be provided for by the addition of another section to the draft of the bill inclosed. In this connection it is suggested that the section added should provide for the disposition of the land ceded—

excepting such tracts as may be reserved by the President, not exceeding 398.67 acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions.

Besides the draft of the bill in duplicate, there are transmitted herewith two copies of the agreement, two copies of the council proceedings, two copies of correspondence had by Inspector McLaughlin with the State authorities of South Dakota respecting the boundaries of Gregory County, two blue prints of map, and two copies of this report, with the recommendation that one copy of each be transmitted to the Senate and House of Representatives, respectively, with request for favorable action on the agreement.

The original agreement and papers accompanying the same are transmitted herewith, with the request that they be returned to the files of this office when the same shall have served their purpose.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner*.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D.C., December 3, 1901.

SIR: I have the honor to acknowledge the receipt by reference from you, of a report from the Commissioner of Indian Affairs, dated the 23d ultimo, and accompanying draft of a bill to ratify an agreement thereto attached, dated September 14, 1901, with the Indians of the Rosebud Reservation, S. Dak., providing for the cession of the unallotted portion of their lands in Gregory County, S. Dak. You direct this office to add another section to the draft of the bill, providing for the disposal of the lands, and to report in triplicate.

In reply I have to state that, in view of the provisions of the "Free homestead" act of May 17, 1900 (32 Stat., 179), and of the act of March 3, 1901 (31 Stat., 1093), providing for the disposal of lands recently opened to settlement and entry in Oklahoma, noting the reservations recommended by the Commissioner of Indian Affairs, and considering the price to be paid by the Government to the Indians for the lands acquired, I respectfully recommend that there be added to said bill the following section:

SEC. 3. That the lands ceded to the United States under said agreement, excepting such tracts as may

be reserved by the President, not exceeding three hundred and ninety-eight and sixty-seven one-hundredths acres in all, for subissue station, Indian day school, one Catholic Mission, and two Congregational missions, shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged: *And provided further*, That the price of said lands shall be two dollars and fifty cents per acre, but settlers under the homestead law, who shall reside upon and cultivate the land entered in good faith for the period required by existing law, shall be entitled to a patent for the lands so entered upon the payment to the local land officers of the usual and customary fee and commissions, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry, except that homestead settlers who commute their entries under section twenty-three hundred and one Revised Statutes, shall pay for the land entered the price fixed herein.

Very respectfully,

BINGER HERMANN,
Commissioner.

The SECRETARY OF THE INTERIOR.

A BILL to ratify an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation to carry the same into effect.

Whereas James McLaughlin, United States Indian inspector, did on the fourteenth day of September, anno Domini, Nineteen hundred and one, make and conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement made and entered into on the fourteenth day of September, nineteen hundred and one, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

ARTICLE I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the

intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one, north; thence east along said township line to the point of beginning, the unallotted land hereby ceded, approximating four hundred and sixteen thousand (416,000) acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

ARTICLE II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to expend for and pay to said Indians, in the manner hereinafter provided, the sum of one million and forty thousand (1,040,000) dollars.

ARTICLE III. It is agreed that of the amount to be expended for and paid to said Indians, as stipulated in Article II of this agreement, the sum of two hundred and fifty thousand (250,000) dollars shall be expended in the purchase of stock cattle, or native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children as soon as practicable after the ratification of this agreement, and that the sum of seven hundred and ninety thousand (790,000) dollars shall be paid to said Indians per capita in cash in five annual installments of one hundred and fifty-eight thousand (158,000) dollars each, the first of which cash payments shall be made within four months after the ratification of this agreement.

ARTICLE IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

ARTICLE V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement.

ARTICLE VI. This agreement shall take effect and be in force when signed by U.S. Indian Inspector James McLaughlin and by three-fourths of the male adult Indians parties hereto, and when accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, U.S. Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at Rosebud Indian Agency, South Dakota, this fourteenth day of September, A.D. nineteen hundred and one.

JAMES MCLAUGHLIN,
U.S. Indian Inspector.

No.	Name	Mark.	Age
1	He Dog	x	65
2	High Hawk	x	50
3	Black Bird	x	52

(and 1,038 more Indian signatures.)

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Agency, South Dakota; that it was fully understood by them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

WILLIAM BORDEAUX, *Official Interpreter.*

WM. F. SCHMIDT, *Special Interpreter.*

ROSEBUD AGENCY, S. DAK., October 4, 1901.

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and the 1,031 Indians of the Rosebud Agency, S. Dak., to the foregoing agreement.

FRANK MULLEN, *Agency Clerk.*

C H. BENNETT, *Farmer, Cut Meat District.*

JOHN SULLIVAN, *Farmer, Glack Pipe District.*

FRANK ROBINSON, *Farmer, Little White River District.*

FRANK SYPAL, *Farmer, Butte Creek District.*

ISAAC BETTELYOUN, *Farmer, Big White River District.*

JAMES A. MCCORKLE, *Farmer, Ponca District.*

LOUIS BORDEAUX, *Ex-Farmer, Agency District.*

ROSEBUD AGENCY, S. DAK., October 4, 1901.

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, S. Dak., is 1,359, of whom 1,031 have signed the foregoing agreement, being 12 more than three-fourths of the male adult Indians of the Rosebud Reservation, S. Dak.

CHAS. E. MCCHESENEY,
United States Indian Agent.

ROSEBUD AGENCY, S. DAK., *October 4, 1901.*

Therefore, it be enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same hereby is, accepted, ratified, and confirmed.

SEC. 2. That in accordance with the provisions of articles second and third of said agreement the sums of two hundred and fifty thousand dollars, for the purchase of stock cattle, and one hundred and fifty-eight thousand dollars, as the first of five annual installments to be paid said Indians in Cash, in all, four hundred and eight thousand dollars, be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated.

SEC. 3. That the land ceded to the United States under said agreement, excepting such tracts as may be reserved by the President, not exceeding three hundred and ninety-eight and sixty-seven one hundredths acres in all, for subissue station, Indian day school, one Catholic Mission, and two Congregational missions, shall be disposed of under the general provision of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars,

as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged: *And provided further*, That the price of said lands shall be two dollars and fifty cents per acre; but settlers under the homestead law, who shall reside upon and cultivate the land entered in good faith for the period required by existing law, shall be entitled to a patent for the lands so entered upon the payment to the local land officers of the usual and customary fee and commissions, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry, except that homestead settlers who commute their entries under section twenty-three hundred and one, Revised Statutes, shall pay for the land entered the price fixed herein.

[#8]

(Memorial of South Dakota legislature petitioning Congress to treat with Indians for cession of portion of Rosebud Reservation.)

[35 Cong. Rec. 377 (1901-1902)]

Rosebud Reservation:

* * *

— Memorial of legislature of South Dakota for restoration to public domain of portion of 747.

[35 Cong. Rec. 747 (1902)]

Mr. GAMBLE. I present a joint resolution of the legislature of South Dakota, favoring the cession of that part of the Rosebud Indian Reservation within the Limits of Gregory County, S. Dak., to the Government, and opening the same to free homesteads. I ask that the Joint resolution be printed in the RECORD and referred to the Committee on Indian Affairs.

There being no objection, the joint resolution was referred to the Committee on Indian Affairs, and ordered to be printed in the RECORD, as follows:

STATE OF SOUTH DAKOTA,
DEPARTMENT OF STATE.

UNITED STATES OF AMERICA,

State of South Dakota, Secretary's Office:

I, O. C. Berg, secretary of the State of South Dakota, do hereby certify that the attached instrument of writing is a true and correct copy of joint resolution No. 6, as

passed by the seventh legislative assembly of South Dakota, as the same appears of record in this office, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of South Dakota. Done at the city of Pierre, this 27th day of February, 1901.

[SEAL.]

O. C. BERG,

Secretary of State.

House joint resolution No. 6, a joint resolution and memorial requesting the Congress of the United States to treat with the Indians for the cession and opening of white settlement and free homestead entry all that porty of the Rosebud Indian Reservation lying within the boundaries of gregory County, S. Dak.

Be it resolved by the house of representatives of the legislature of South Dakota, the Senate concurring: Whereas there is in the organized portion of Gregory County, S. Dak., about 6 Congressional townships, said tract being too small in area, population, and assessed valuation to successfully maintain a county government without causing such government to become unduly burdensome; and

Whereas there is also within the boundaries of said Gregory County, S. Dak., about 23 Congressional townships of agricultural land which forms a part of the Rosebud Indian Reservation, and upon which are living a few Indians who have all taken their allotments in severalty; and

Whereas it is understood that the Indians are willing for a reasonable compensation to cede all that portion of the reservation herein mentioned to the Government; and

Whereas the ceding of said portion of the reservation to the Government would still leave a sufficiently large and suitable territory to meet all the requirements of an Indian reservation, while at the same time the ceding and

opening to white settlers of all that portion of said reservation above referred to would add to the productive farming land of the State, enlarge the area of Gregory County to a proper and desirable size, and greatly lessen the expense of maintaining the government of said county: Therefore, be it

Resolved, That we respectfully petition and memorialize the Congress of the United States to meet with the Indians at the earliest practicable date for the cession of all that portion of the Rosebud Indian Reservation lying within the boundaries of Gregory County, S. Dak., and that said tract be open to free homestead entry by white settlers; and be it further

Resolved, That we hereby request our Senators and representatives in Congress to use their best efforts to effect the object prayed for in this memorial; and the secretary of state is hereby instructed to forward copies of this memorial to our Senators and Representatives in Congress.

[#9]

(S. Doc. 324, 57th Cong. 1st Sess. (1902) petition of certain Lower Brulé Indians in South Dakota asking for legislation to permit them to secure allotments on the Rosebud Reservation.)

[35 Cong. Rec. 377 (1901-1902)]

Rosebud Reservation: bills to ratify agreement with Indians on (see bills S. 2992; H. R. 9057).

—amendment in Senate bill (S. 2992) to ratify agreement with Sioux Indians on 4855.

—letter of Secretary of Interior transmitting agreement with Indians on (S. DOC. 31) 206, 245,

—memorial legislature of South Dakota for restoration to public domain of portion of 747.

[35 Cong. Rec. 4706 (1902)]

Mr. GAMBLE. I present a petition, and accompanying papers, of certain Lower Brule Indians in South Dakota residing on the Rosebud Reservation, in that State, and claiming to belong to the last-named tribe, praying for the enactment of legislation to enable them to secure allotments upon that reservation. I move that the petition and accompanying papers be printed as document, and referred to the Committee on Indian Affairs.

[#9A]

(Petition of Certain Lower Brulé Indians residing upon the Rosebud Reservation asking for legislation to permit them to secure allotments upon said reservation.)

[S. Doc. 324, 57th Cong. 1st Sess. 1-7 (1902)]

PETITION AND PAPERS RELATIVE TO
CERTAIN LOWER BRULÉ INDIANS IN
SOUTH DAKOTA.

Mr. GAMBLE presented the following

PETITION, WITH THE ACCOMPANYING PAPERS, OF
CERTAIN LOWER BRULÉ INDIANS IN SOUTH
DAKOTA RESIDING UPON THE ROSEBUD RESER-
VATION IN SAID STATE AND CLAIMING TO
BELONG TO THE LAST-NAMED TRIBE, ASKING
FOR LEGISLATION TO PERMIT THEM TO SE-
CURE ALLOTMENTS UPON SAID RESERVATION.

APRIL 26, 1902.—Referred to the Committee on Indian
Affairs and ordered to be printed.

PETITION.

*To the Senate and the House of Representatives of the
United States of America in Congress Assembled:*

We, the undersigned, recognized as members of the
Lower Brulé tribe of Indians, and residing with that

portion of said tribe now living and belonging on the
Rosebud Reservation, in the State of South Dakota,
respectfully petition your honorable body that such
legislation be enacted as will secure to us the lands which
we have selected as our allotments on the Rosebud
Reservation before the same are thrown open to settle-
ment, as will be done after the ratification of the
agreement with the Rosebud Sioux Indians, for cession to
the United States of the portion of their reservation
unallotted, and lying within what is known as Gregory
County, S. Dak.

We represent, and show evidence herewith submitted,
that we, except John Sully, a white man, are of Sioux
Indian blood; that we all have been living with the Lower
Brulé Sioux Indians, and recognized by them as belonging
to said tribe and entitled to all of the rights and benefits
thereof as other members of said tribe, and that we have
heretofore had and enjoyed such rights and benefits; that
because it happened that when the great Sioux Reserva-
tion was divided up into separate reservations under the
agreement of 1898 we were supporting ourselves and
were not at that specific time receiving rations from the
Government at the Rosebud Agency, though residing on
the portion of the reservation set apart for the Indians so
receiving rations at that agency, we have been denied the
right to allotments of lands selected by us.

We further represent that in the proceedings of the
council with the Lower Brulé Indians preliminary to the
negotiation of the agreement for the removal of a portion
of the Lower Brulé tribe to the Rosebud Reservation it
was distinctly stated by the chiefs to Inspector McLaugh-
lin, who conducted the negotiations, that we were
recognized as members of said Lower Brulé tribe of
Indians, and that it was the desire of the said tribe that
your petitioners should be enrolled as such members, and

be entitled to all rights and privileges of said tribe; that this action was taken at that time, not as the initiative proceedings for our recognition as members of said tribe, but because there had been recently some action by the Department calling in question our right to allotments of lands that had been made to us, notwithstanding the fact that we had long been recognized as members of the said tribe of Lower Brulé Indians, and had received other benefits inuring to such members under the treaties with the Sioux Nation of Indians.

We further represent that to deprive us of the lands we have selected and improved as our homes will work a very great hardship to us, and leave us without homes, lands, etc.

We urgently request that, in the legislation for the ratification of the agreement of the Rosebud Sioux Indians for cession to the United States of the unallotted lands of the reservation in what is known as Gregory County, S. Dak., now pending before Congress, and set out in Senate Doc. No. 31, Fifty-seventh Congress, first session, such provision be made will secure to us and our children and grandchildren the lands we have selected for our allotments, and which we have improved and are improving as our homes.

And we will ever pray.

JOHN SULLY.

MARY SULLY,

(For herself and for her minor children, Millie Sully, John Sully, Frank Sully, Georgia Sully, and Sammy Sully and Cloudy Sully.)

EVA SULLY.

WILLIAM KINKADE.

MARY GAUGHEN,

(For herself and her minor children, Emmitt Gaughen, Ollie Gaughen, Nellie Gaughen, Julia Gaughen, Amy Gaughen.)

LOUISE WAUGH,

(For herself and her minor child, John Waugh.)

ESTELLA BLACKBIRD,

(For herself and her minor children, Susie Blackbird, Lucy Blackbird, Annie Blackbird, and George Blackbird.)

ROSEBUD RESERVATION, S. DAK., *April 18, 1902.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,

Washington April 4, 1902.

SIR: This office is in receipt of your communication of the 29th ultimo, with which you inclose the formal application, dated March 22, 1902, of Mrs Mary Sully, for allotments of land on the Rosebud Indian Reservation, S. Dak., for herself, husband, children, and grandchildren, as follows:

Her husband, John Sully, a white man.

Her children: Mary Gaughen (nee Kinkade), 33 years old; Louise Waugh (nee Sully), 20 years old; Estelle Kinkade, 25 years old; Willia Kinkade, 27 years old; Eva Sully, 19 years old; Milly Sully, 16 years old; John Sully, 15 years old; Frank Sully, age not given; Georgia Sully, 12 years old; Sammy Sully, 10 years old, and Cloudy Sully, 6 years old.

Her grandchildren: Emmitt Gaughe, 10 years old; Ollie Gaughen, 8 years old; Nellie Gaughen, 6 years old; Julia Gaughen, 4 years old; Amy Gaughen, 2 years old; John Waugh, 5 years old; Susie Blackbird, 10 years old; Lucy Blackbird, 8 years old; Annie Blackbird, 6 years old, and George Blackbird, 4 years old, children of Estelle Kinkade.

Mrs. Sully states in her application that she is a full-blood Sioux Indian, 46 years of age, and sets out at some length the history of her claim.

In transmitting her application you state concerning the same that she is the wife of a white man, John Sully; that her former husband was named Kinkade; that she swears she was born and reared on the Great Sioux Reservation on the west side of the Missouri River where she has always lived; that she was for a while on the Lower Brulé Reservation, where she and members of her family received benefits as Indians, were allotted lands, etc.; that they elected to leave Lower Brulé and come to the Rosebud Reservation with the Lower Brulés to take allotments, but for reasons unknown to her allotments at Rosebud have been withheld from her and members of her family; that there was some disturbance of their status at the time Inspector McLaughlin negotiated the agreement with the Lower Brulé Indians to remove to the Rosebud Reservation, at which time the chiefs and leading men presented the matter to the inspector and urged that the whole Sully family, "all of whom they recognize as belonging to their tribe or band, should be enroled as members thereof;" that Mr. McLaughlin promised the chiefs that he would present the matter to the Department with his recommendation thereon, etc.; and that Mrs. Sully urges that her claim in this matter be given prompt attention, as she fears that she and her family will be deprived of the lands that they have selected and improved as their allotments.

In reply, you are informed that under date of July 9, 1895, A. B. Lucas, esq., of Castilia, S. Dak., addressed a communication to this office which he called attention to the matter of allotments of lands on the Rosebud Reservation, and presented claims of Mary Drappo or Drapeau (mother of the present applicant) and her

daughters and granddaughters for allotments on the said reservation. September 23, 1895, the case was fully reported to the Secretary of the Interior, who under date of September 28, 1895, passed upon the question as to whether or not the said persons were entitled to allotments or enrollment as Sioux Indians, deciding as follows:

From the evidence presented by Agent Wright, of the Rosebud Agency, in his letter of the 10th instant, it appears that the father of the aforesaid Mary Drappo was a Yankton Indian, and that her mother was a member of the Crow Creek tribe, both of whom were enrolled at the Yankton Agency; that while living at that agency with her parents she married her present husband, a white man, and moved to Cedar Island, on the Missouri River; that about 1868, when the Rosebud Agency was located at Whetston Creek (then the Whetstone Agency), near the Missouri River, she applied to the agent and received a ration ticket for herself and six children, where she drew rations for about two years; that when the Whetstone Agency was moved from the above-named location (which removal was effected during the year 1875, in the State of Nebraska, where the agency was known as the Spotted Tail Agency, whence it was again moved to Dakota in 1878, to its present location, where it has since been known as the Rosebud Agency). She remained at Cedar Island and has drawn no rations since at any place; that after the agency was moved her husband took a claim on the east side of the Missouri River and moved there with his family, and that they moved back to the west side of the river and on to the Rosebud Reservation about six years ago, where she has since lived; that she then applied to the present agent at Rosebud for a ration ticket and was informed that he had no authority to give it to her.

From this statement of facts it appears that Mrs. Drappo is of Yankton Sioux lineage, and that for a short period subsequent to her marriage she was allied with the Indians of the Whetstone (now Rosebud) Agency, although she never resided upon any of the reservations of the Great Sioux Nation until about six years ago, when she moved to, and has since remained upon, the Rosebud Reservation.

Section 2 of the act of March 2, 1889, providing for the division of a portion of the reservation of the Sioux Nation of Indians into separate reservations, provides—

“That the following tract of land, being a part of the land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Rosebud Agency, in said Territory of Dakota. * * * (25 Stats, 888.)

At the date of the aforesaid act, Mrs. Drappo was not receiving rations at the Rosebud Agency; nor had she received any there since it ceased to be the Whetstone Agency, many years before, and then only for a limited period, up to which time, however, and until about six years ago, she had never resided upon the lands of the Rosebud Reservation. Nor has it been established that she was residing there at the date of the act named.

It would seem, therefore, that whatever rights attach to Mrs. Drappo as an Indian attach to her as a member of the Yankton Sioux tribe, and that she has no rights as a member of any of the tribes or bands of the Great Sioux Nation.

These facts apply with equal force to the children of Mrs. Drappo, named in your letter.

The agent of the Rosebud Agency and also the said Mr. Lucas were fully informed of this decision, the latter being furnished with a copy of the same.

June 19, 1899, the Indian agent of the Yankton Agency submitted to this office the application of Mrs. Millie Drappo McGhee (a sister of the present applicant) for enrollment as a half-breed Yankton Sioux at the agency under his charge. Her application was on July 13, 1899, submitted to the Department with the statement that from the facts in the case it appears that Mrs. Millie McGhee was one-quarter Yankton Sioux; that her mother, Mary Drappo, was one-half Yankton and one-half Crow Creek, and that it would seem that the said Mrs. McGhee would be entitled to enrollment with the Indians of the Yankton Agency, but that her children would not. In reply the Department, in letter of July 18, 1899, stated that neither Mrs. McGhee nor her children were entitled to the rights applied for. This letter reads as follows:

Mrs. McGhee is a quarter-blood Yankton Sioux, being the daughter of a white man and a half-blood Yankton woman, whose father was a member of that tribe, the mother being a Crow Creek Indian. Mrs. McGhee is the wife of a white man, and has never had a legal residence upon any Indian reservation, although it appears that for a short time during her infancy she may have resided with her parents at or near the old Whetstone Agency on the Missouri River, and possibly later with them also on the Rosebud Reservation, but she has never been recognized as a legal member of any tribe of Indians.

Mary Drappo, or Drapeau, Mrs. McGhee's mother, made application in 1895 for enrollment with the Rosebud Sioux, including also two sons and two daughters and one granddaughter—Mrs. McGhee being one of the daughters whose names were then mentioned.

It was then decided (September 28, 1895) that Mrs. Drappo had no rights as a member of any of

the tribes or bands of the great Sioux Nation; that whatever her rights as an Indian attached as a member of the Yankton Sioux tribe, and that these facts applied with equal force to her children.

Section 2 of "An act in relation to marriage between white men and Indian women," approved August 9, 1888 (25 Stats., 392), provides:

"That every Indian woman, member of any such tribe of Indians, who may here-after be married to any citizen of the United States is hereby declared to become by such marriage a citizen of the United States, with all the rights, privileges, and immunities of any such citizen, being a married woman: *Provided*, That nothing in this act contained shall impair or in any way affect the right or title of such married women to any tribal property or interest therein."

Both Mrs. Drappo and Mrs. McGhee are the wives of white men. Mrs. Drappo retains her status as an Indian, having married prior to the date of the above-named act, and is entitled to recognition and enrollment as a member of the Yankton Sioux tribe; but Mrs. McGhee, whom it is assumed married subsequent to that date, thereby became a citizen of the United States. Neither of them is a recognized member of any tribe of Indians.

Mrs. McGhee being the daughter of a white man and an Indian woman who is not a recognized member of any tribe acquires no rights under the provisions of the act of June 7, 1897 (30 stats., 90), which declares:

"That all children born of a marriage heretofore solemnized between a white man and an Indian woman by blood and not by adoption, where said Indian woman is at this time or was at the time of her death recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs or belonged at

the time of her death, by blood, as any other member of the tribe, and no prior act of Congress shall be construed as to debar such child of such right."

Not being herself a recognized member of the tribe the children of Mrs. McGhee are also debarred of tribal rights.

It does not appear that Mrs. Drappo has applied for enrollment with the Yankton Sioux, nor is it known to the Department that she desires to be enrolled with that tribe. Therefore, notwithstanding the statement herein as to her rights, it may not be inferred that authority to enroll her name is granted.

April 5, 1900, the Secretary referred to this office a communication from Hon. R. J. Gamble, M. C., inclosing a letter from Rev. John Eastman "in regard to the status of Mrs. Drappo, Mrs. Sully, and others, who claim enrollment with the Rosebud Indians," and stated that it was claimed by the said Rev. Mr. Eastman that these claimants "had also received \$50 per capita payment to all Indians of the age over 18 and who received allotment * * * according to the seventeenth section of the treaty of 1889." The Department directed that the records of this office be examined to the end that it might be informed whether or not this statement as to the applicant was correct, and if so at what agency they received their allotments and per capita payments. In reply this office stated, under date of May 15, 1900, as follows:

In reply I have respectfully to report that upon an examination of the records of this office it was found that an allotment was made, under date of January 28, 1895, at the Crow Creek Agency to a "Mrs. Sully," aged 72, who received a per capita payment of \$50. At the same time it was also found

a Mrs. Sully, aged 44, had received an allotment of land at the Lower Brulé Agency and under date of June 11, 1896, received a per capita payment of \$50. The Indian agents of the respective agencies were therefore requested to report at once whether or not the Mrs. Sully found to have received an allotment and per capita payment of \$50 at their agencies was the woman to which Rev. Mr. Eastman referred.

I am now in receipt of a report, dated the 7th instant, from the United States Indian agent of the Crow Creek Agency that the Mrs. Sully who received an allotment of land on the Crow Creek Reservation is not in any way related to the Drappo family. Under date of April 19 last Agent Ash reported as follows:

"In reply I have to advise you that Mrs. Sully, wife of John Sully, is the daughter of Mary Drappo or Drapeau, whom I have known for the past thirty years, and her children received allotments Nos. 546, 547, 548, 549, 550, 551, 552, 553, and Joseph La Tuna, son-in-law of Mrs. Sully, and Mrs. La Tuna, his wife (daughter of Mrs. Sully), received allotment No. 606, in 1895, on the Lower Brulé Reserve.

"That the records of this office show Mrs. Sully received the \$50 payment made June 11, 1896, No. 228, also Mrs. Sully's daughter, Mrs. Joseph La Tuna, No. 203 on same pay roll."

It would therefore appear that Rev. Mr. Eastman's statement is in part correct, as the only members of this family who received allotments and per capita payments were Mrs. Sully and her children. It further appears that they received such allotments in 1895, and in the same year applied for allotments of land and enrollment at the Rosebud Agency, but were denied such rights in Department letter dated September 28, 1895, in which decision it was further stated that neither Mrs. Drappo nor any

of her children were entitled to rights as Indians with any of the tribes or bands of the Sioux Nation. Therefore, it would seem that Mrs. Sully and her children received their allotments upon the Lower Brulé Reservation before this decision was rendered. These allotments were reported upon the schedule by the allotting agent at the time, but it was afterwards decided to reallocate the lands upon this reservation, and such reallocation has been made and the schedule received in this office. It does not contain the names of Mrs. Sully nor any of her children.

June 4, 1900, the said Rev. Mr. Eastman again wrote concerning this case and stated that in his opinion the Department had committed an error of law in deciding the same as well as an error of fact, etc., and requested that the claim of Mrs. Sully and her children and the others involved in the decision be resubmitted to the Department for its consideration of certain questions which he propounded asking in brief as to where the burden of proof lay in the premises and for an interpretation of the provisions of law quoted in Department letter of September 28, 1895. This letter of inquiry from Mr. Eastman, which was in fact an appeal from the previous decisions of the Department in the matter, was submitted to the Department by this office in a somewhat lengthy report, dated July 5, 1900, the conclusion of which reads as follows:

In conclusion I have to say that I fail to find such equitable or legal considerations in the case as in my opinion called for the reversal of action previously taken in the premises, and it is therefore recommended that the motion for review and reversal of the Department's previous action be denied and that such previous decision be adhered to as final.

The Department, under date of July 13, 1900, advised Rev. Mr. Eastman in this case "that the recommendation of the Commissioner of Indian Affairs is approved, and that the previous decision of the Department in the case of Mrs. Drappo and others mentioned by you (him) is adhered to as final."

From the above-quoted decisions of the Department it will be seen that neither Mrs. Sully nor any of her children or grandchildren have through her any rights to benefits with the Indians of the Rosebud Agency.

In the case of Mrs. Sully's husband, a white man, it is not shown that he was ever adopted by the Rosebud Indians as a member of their tribe and his adoption approved by this Department; and unless he could satisfactorily establish his claims by blood or adoption to rights with the Rosebud Sioux it is not seen how he could legally be given an allotment on the Rosebud Reservation.

Very respectfully,

W. A. JONES,
Commissioner.

R. V. BELT, Esq.,

Attorney at Law, Washington, D.C.

Resolved by the Sioux Indians of the Rosebud Indian Reservation, in the State of South Dakota, in council assembled (according to the custom of said Indians), That John Sully and his wife, Mary Sully, are, and have heretofore been, recognized as members of the Lower Brulé tribe of Sioux Indians, and as such are, with all of their children and grandchildren, entitled to allotments of land and all other rights and benefits with the Lower Brulé Sioux Indians on the Rosebud Reservation; that the said Mary Sully is a woman of Sioux Indian blood; that

prior to the agreement negotiated by Inspector McLaughlin with the Lower Brulé Sioux Indians for their removal to the Rosebud Reservation the said Mary Sully and members of her family had been allotted lands on the Lower Brulé Reservation, and had received benefits as members of said Lower Brulé tribe of Indians under the Sioux Indian treaties; and that they removed to the Lower Brulé Reservation from the Rosebud Reservation, and again from the Lower Brulé Reservation to the Rosebud Reservation, and have taken allotments of land on which they have built houses and made other improvements in making homes for themselves, but said allotments of land have not been allowed to them by the allotting agents, and unless they are secured in said allotments before the ratification of the pending agreement for opening to settlement the lands within what is known as Gregory County, S. Dak., they will be deprived of their homes and allotments and will be without lands.

It is therefore desired by the Indians of the Rosebud Reservation that such action be taken by the Department and by the Congress of the United States as shall be found to be necessary to secure to the said John Sully and Mary Sully and the children and grandchildren of said Mary Sully, all being of Sioux Indian blood, a good and sure title to the lands they have selected for allotments to the full extent they are entitled thereto as members of the said Lower Brulé tribe of Indians now residing upon the Rosebud Reservation.

That the names, ages, and sex of the persons covered by these resolutions and recognized to be entitled to the rights herein specified are—

John Sully, white man, male, husband of Mary Sully.

Mary Sully, Sioux Indian, female.

Mary Gaughen (née Kinkade), female, daughter of Mary Sully, age 33 years.

Louise Waugh (née Sully), female, daughter of Mary Sully, age 20 years.
 Estelle Kinkade (now Blackbird), female, daughter of Mary Sully, age 25 years.
 Willie Kinkade, male, son of Mary Sully, age 27 years.
 Eva Sully, female, daughter of Mary Sully, age 19 years.
 Millie Sully, female, daughter of Mary Sully, age 16 years.
 John Sully, male, son of Mary Sully, age 15 years.
 Frank Sully, male, son of Mary Sully.
 Georgia Sully, female, daughter of Mary Sully, age 12 years.
 Sammy Sully, male, son of Mary Sully, age 10 years.
 Cloudy Sully, male, son of Mary Sully, age 6 years.
 Emmitt Gaughen, female, granddaughter of Mary Sully, age 10 years.
 Ollie Gaughen, female, granddaughter of Mary Sully, age 8 years.
 Nellie Gaughen, female, granddaughter of Mary Sully, age 6 years.
 Julia Gaughen, female, granddaughter of Mary Sully, age 4 years.
 Amy Gaughen, female, granddaughter of Mary Sully, age 2 years.
 John Waugh, male, grandson of Mary Sully, age 5 years.
 Susie Blackbird, female, granddaughter of Mary Sully, age 10 years.
 Lucy Blackbird, female, granddaughter of Mary Sully, age 8 years.
 Annie Blackbird, female, granddaughter of Mary Sully, age 6 years.
 George Blackbird, male, grandson of Mary Sully, age 4 years.

The persons named Mary Gaughen, Estelle Kinkade, and Willie Kinkade are the children of Mary Sully by a former husband whose name was Kinkade.

Done in council, on the Rosebud Reservation, S. Dak., this 18th day of April, 1902.

FOOL (his x mark) WHALK,

President of Council.

THOMAS (his x mark) RED LEAF,

Secretary of Council.

I certify that I interpreted and explained the foregoing to the council this 18th day of April, 1902.

LEON DRAPEAR,

Interpreter of Council.

[#10]

(Legislative history of H.R. 17467, a bill to ratify and amend the 1901 agreement with the Sioux Indians of the Rosebud Reservation.)

[36 Cong. Rec. 148 (1902-1903)]

Rosebud Reservation: bills to ratify and amend agreement with Sioux Indians on (see bills S. 7390; H.R. 17467)

—memorial of legislature of South Dakota favoring ratification of agreement with Indians on 1559, 1626.

[36 Cong. Rec. 141 (1902-1903)]

H.R. 17467—

To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Burke of South Dakota; Committee on Indian Affairs 2409.—Reported back with amendment (H.R. REPORT 3839) 2473.

[36 Cong. Rec. 2409 (1903)]

By Mr. BURKE of South Dakota: A bill (H.R. 17467) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[36 Cong. Rec. 2473 (1903)]

REPORTS OF COMMITTEE ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

* * *

Mr. BURKE of South Dakota, from the Committee on Indian Affairs, to which was referred the bill of the House (H.R. 17467) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect, reported the same with amendments, accompanied by a report (No. 3839); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

[#10A]

(House report to accompany H.R. 17467 concerning the 1901 agreement with the Rosebud Sioux Indians.)

[H.R. Rep. No. 3839, 57th Cong., 2d Sess. 1-5 (1903)]

AGREEMENT WITH INDIANS OF ROSEBUD RESERVATION, S. DAK.

February 21, 1903.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BURKE, of South Dakota, from the Committee on Indian Affairs, submitted the following

R E P O R T

[To accompany H.R. 17467.]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 17467) ratifying and amending an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making an appropriation and provision to carry the same into effect, having had the same under consideration, submit the following report and recommend that the bill do pass with the following amendments:

In line 18, page 9, after the word "act," insert "and amended agreement," and add a new section as section 7.

The purpose of this bill is to ratify and amend an agreement made with the Rosebud Indians, in South Dakota, by Inspector James McLaughlin, dated September 14, 1901, providing for the cession to the United States of the unallotted portion of their lands in Gregory County, S. Dak., and opening the same to settlement and entry under the homestead and town-site laws.

The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There are 452 Indians holding allotments in the county, aggregating 104,999 acres.

The agreement made with the Indians provided that the United States should pay for the land at the rate of \$2.50 per acre, \$250,000 of the amount to be expended in the purchase of stock cattle for the benefit of the Indians and the balance to be paid per capita in cash in five annual installments.

A bill for the ratification of this treaty and opening the lands to settlement and entry was reported by this committee favorably. A similar bill passed the Senate, was referred to this committee, and was also unanimously reported, and both bills have been upon the Calendar of the House for passage for some time. The present bill proposes to adopt a new policy in acquiring lands from the Indians, and it provides that the lands shall be disposed of to settlers under the homestead and town-site laws, and to be paid for by the settlers, and the money to be paid to the Indians only as it is received in payment for the land from the settler. It provides that \$250,000 shall be expended for the purchase of stock cattle, as the original treaty provides, and not more than \$500,000 shall be expended for or paid to the Indians within two years, and not more than \$150,000 shall be expended per year thereafter until the expiration of the five years.

This provision is for the protection of the Indians, and to prevent them from receiving the full proceeds from the sale of these lands before five years. The bill also provides that sections 16 and 36, or the equivalent of two sections in every township, shall be ceded to the State of South Dakota for school purposes and paid for by the United States at \$2.50 per acre, and an appropriation of \$90,000 is made for this purpose. This provision is in conformity with the guarantee given to the State of South Dakota by Congress in the enabling act, which provided that any reservations open to settlement subsequent to the admission of the State into the Union, that sections 16 and 36 would be reserved and ceded to the State for school purposes.

The provision of the bill for payment of the lands by settlers, in installments, 50 cents per acre when entry is made, and the balance in four payments of 50 cents per acre, is deemed a wise one, as it will make it easy upon the settler to pay for his land, and will also provide a fund to pay the Indians an annual per capita cash payment. Section 5 of the bill provides that it shall be of no effect until it is assented to and accepted by three-fourths of the male adult Indians over 18 years of age, which provision is in accordance with the twelfth article of the treaty between the United States and the Sioux Indians, concluded April 29, 1868, and while it is probably true that it is not necessary to secure the consent of the Indians in enacting legislation affecting them, in view of the treaty stipulation aforesaid, the committee have concluded that it would be better to require the treaty as amended to be accepted by the Indians before it becomes effective.

The lands are agricultural and desirable, and will probably all be filed upon and paid for, but for fear there might be some tracts undesirable for homesteads a

provision is made in the bill by which, under rules and regulations to be prescribed by the Secretary of the interior, the undisposed-of portions may be sold at public auction to the highest bidder, in tracts not exceeding 160 acres to one person, who must be a citizen of the United States.

The committee are of the opinion that the bill is in every way fair to the Indians and also to the United States, and that the terms by which the lands may be acquired by settlers are not unreasonable, and therefore urge the passage of the bill. The agreement, as originally made with the Indians, which is a part of the bill, was approved by the Commissioner of Indian Affairs and the Secretary of the Interior, as will be shown by communications which are herewith submitted.

DEPARTMENT OF THE INTERIOR, OFFICE OF
INDIAN AFFAIRS,

Washington, November 23, 1901.

SIR: The office has the honor to acknowledge the receipt of a letter dated October 11, 1901, from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement dated September 14, 1901, with the Indians of the Rosebud Reservation, in South Dakota providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress when bills providing for negotiations to that end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the lands opened up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 19, 1901, a draft of instructions was prepared by this office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the Department on March 21, 1901, and Inspector McLaughlin detailed for the duty of conducting negotiations.

* * * * *

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted,

situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 73 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installment of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existing statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated September 14, 1901, and contains the signatures of James McLaughlin, United States Indian inspector, and of 1,031 male adult Indians of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement, to the effect that the provisions thereof were fully explained by them to the Indians in the open council, that it was fully understood by them before signing, and that the signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

* * * * *

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three fourths of the male adult population of the reservation.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that while he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased; whereupon a number of

the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached. * * *

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek Day School, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 398.67 acres thus being reserved.

Respecting the desposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years will aid the Indians materially in

providing for their family needs during that time, after which the matured cattle, the increase from the stock issued to them, will be marketable and will with proper care give them and annual revenue thereafter.

The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indians accept such provisions, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians and equal per capita distribution of it could not be made. The Indians insisted for a long time upon having the entire \$790,000 paid to them in cash in one payment; but the inspector says he finally succeeded in getting their consent to its payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

* * * * *

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-

support. He heartily recommends the approval and ratification of the agreement. * * *

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this office and from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the amount necessary to carry the provisions of articles 2 and 3 of the agreement into effect. * * *

W. A. JONES, *Commissioner.*

THE SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,

Washington, December 6, 1901.

SIR: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated the 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian

Affairs and the Commissioner of the General Land Office, ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully, E. A. HITCHCOCK,
Secretary.

The PRESIDENT PRO TEMPORE UNITED STATES
SENATE.

[#11]

(Legislative History of S. 7390—the Senate companion bill to H.R. 17467, a bill to ratify and amend the 1901 agreement with the Sioux Indians of the Rosebud Reservations.)

[36 Cong. Rec. 148 (1902-1903)]

Rosebud Reservation: bills to ratify and amend agreement with Sioux Indians on (see bills S. 7390; H.R. 17467).

—memorial of legislature of South Dakota favoring ratification of agreement with Indians on 1559, 1626.

[36 Cong. Rec. 51 (1902-1903)]

S. 7390—

To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Gamble; Committee on Indian Affairs 2434.—Reported back with amendments (S. REPORT 3271) 2498.—Debated and passed Senate 2502, 2747.—Referred to House Committee on Indian Affairs 3074.

[36 Cong. Rec. 2434 (1903)]

Mr. GAMBLE introduced a bill (S. 7390) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect; which was read twice by its title, and referred to the Committee on Indian Affairs.

[36 Cong. Rec. 2498 (1903)]

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (S. 7390) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect, reported it with amendments, and submitted a report thereon.

[36 Cong. Rec. 2502 (1903)]

Mr. GAMBLE. I ask unanimous consent for the present consideration of Senate bill 7390, which I have just reported and which is at the desk.

Mr. MASON. I gave notice that at this hour I would ask the Senate to proceed to the consideration of the Post-Office appropriation bill. The Senator from South Dakota says the bill he wishes to call up is short and will not provoke discussion, and I will yield to him.

Mr. GAMBLE. I do not think it will provoke any discussion. A similar bill has already passed the Senate.

Mr. LODGE. How long is it?

The PRESIDENT pro tempore. Ten pages.

Mr. FAIRBANKS. I ask unanimous consent—

The PRESIDENT pro tempore. The Senator from South Dakota has the floor and asks unanimous consent for the present consideration of a bill, which will be read.

Mr. LODGE. I do not think we ought to go on with the bill now.

Mr. GAMBLE. I will waive it for the present.

The PRESIDENT pro tempore. The Senator from Massachusetts objects.

[36 Cong. Rec. 2747-2748 (1903)]

AGREEMENT WITH SIOUX INDIANS OF ROSEBUD RESERVATION.

Mr. GAMBLE. I ask unanimous consent for the present consideration of the bill (S. 7390) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

The Secretary read the bill; and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported from the Committee on Indian Affairs with amendments.

The first amendment was, in section 5, page 9, line 18, after the word "act," to insert "and amended agreement;" so as to make that section read:

SEC. 5. This act and amended agreement shall take effect only upon the acceptance thereof and consent thereto by the Rosebud Indians, in manner and form prescribed by the sixth article of the

agreement herein as amended, which said acceptance and consent shall be made known by proclamation by the President of the United States upon satisfactory proof presented to him that the same has been obtained in the manner and form required by said sixth article of said agreement, which proof shall be presented to him within two years from the passage of this act, and upon failure of such proof and proclamation this act become of no effect and null and void.

The amendment was agreed to.

The next amendment was to add as a new section the following:

SEC. 7. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections 16 and 36 or the equivalent in each township, or to dispose of said land except as provided herein; or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend any pay over the proceeds received from the sale thereof only as received, as herein provided.

The amendment was agreed to.

Mr. DUBOIS. I will ask the Senator who has charge of this bill—I could not hear the reading in the confusion which existed—if the treaty did not provide that these lands should be open to free homestead settlement?

Mr. GAMBLE. No, sir. The original bill, which was passed at the last session of Congress, provided free homes. This bill is changed in that particular and provides for the settlers paying \$2.50 an acre.

Mr. DUBOIS. I trust, Mr. President, that that provision will not be passed. I think the free-home provision ought

to stay in the bill. I hope the Senate will not pass any bill buying Indian reservations and charging settlers for the land. I see no reason why Congress should do that.

A free-homes bill was passed a few years ago, relieving all those who had gone on Indian reservations and taken up lands from paying the money which they had agreed to pay when they went on those lands. We had an illustration on my own State of the opening of an Indian reservation and charging \$3.75 an acre for the land. It was the best land in the State. Settlers went on there, taking the lands with the understanding that they were to pay \$3.75 an acre for them. The proposition confronted us to pass a free-homes bill to be applied to all reservations, to lands which had been opened previous to the passage of that bill. The bill was passed a year or two ago. I had the honor of being chairman of the Public Lands Committee of this body when that proposition was urged, and I opposed it unless it were made to apply to all future purchases of Indian reservations. So long as I had the honor of being the chairman of the committee the free-homes bill was not passed. Finally the bill went to the Committee on Indian Affairs, and I think came out from that committee.

The argument made then is good now, and is always good. The men who go out there representing the Government to make treaties with the Indians are besieged by the people living around the reservation to make a treaty, no matter how much they have to pay for the land. All the white people urge that to be done.

The PRESIDENT pro tempore. This debate is proceeding by unanimous consent. There is nothing pending before the Senate unless the Senator objects to the further consideration of the bill.

Mr. DUBOIS. Will the Senator from South Dakota not accept an amendment providing for free homes, as was provided for in the original bill?

Mr. GAMBLE. At the last session of Congress this bill was passed with the free-homes provision, which was insisted upon here. It has met with serious objection in the other House, and can not be carried through there. The bill has been amended to meet those objections; and we prefer to have the bill passed in its present form. Should the bill go to the other House containing the free-homes amendment, it would meet the fate of the bill passed last year. We are very anxious to have this bill in its present form. The delegation of the State of South Dakota is satisfied with it under existing conditions, and I trust no objection will be interposed by the Senator from Idaho.

Mr. DUBOIS. Mr. President, I have been maintaining my present position for several years, and it is a correct position. I think now, while I myself am besieged by my own people to have the price of land reduced from that provided for in the treaty stipulation when it was passed a couple of years ago, and approved by all our Senators and Representatives, still they afterwards come here asking Congress to take away from them the direction to pay for those lands at the stipulated price, and they ask to be relieved from paying what they agreed to pay when the act was passed through Congress, I do not feel as though I could give my consent that the bill be amended in this way.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

[36 Cong. Rec. 3074 (1902)]

SENATE BILLS REFERRED.

* * *

S. 7390. An act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation and provisions to carry the same into effect—to the Committee on Indian Affairs.

[#11A]

(Senate report to accompany S. 7390 concerning the 1901 agreement with the Rosebud Sioux Indians)

[S. Rep. No. 3271, 57th Cong., 2d Sess. 1-5 (1903)]

AGREEMENT WITH THE INDIANS OF THE
ROSEBUD RESERVATION, S. DAK.

FEBRUARY 23, 1903.—Ordered to be printed.

Mr. GAMBLE, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany S. 7390]

The Committee on Indian Affairs, to whom was referred the bill (S. 7390) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, of South Dakota, and making appropriation and provision to carry the same into effect, having had the same under advisement, make the following report and recommend that the bill do pass with the following amendments:

After the word "act," in line 18 on page 9, insert the following words: "and amended agreement."

Add the following as an additional section to said bill:

SEC. 7. Nothing in this act contained shall in any manner bind the United States to purchase any

portion of land herein described, except sections sixteen and thirty-six, of the equivalent in each township, or to dispose of said land except as provided herein; or to guarantee to find purchasers for said lands or any portion thereof; it being the intention of this act that the United States shall act as trustee for said Indians, to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided.

Your committee adopts as a part of its report the report of the Committee on Indian Affairs of the House on House Bill 17467, being a bill identical in its provision with the one under consideration:

The purpose of this bill is to ratify and amend an agreement made with the Rosebud Indians, in South Dakota, by Inspector James McLaughlin, dated September 14, 1901, providing for the cession to the United States of the unallotted portion of their lands in Gregory County, S. Dak., and opening the same to settlement and entry under the homestead and town-site laws.

The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There is 452 Indians holding allotments in the county, aggregating 104,999 acres.

The agreement made with the Indians provided that the United States should pay for the land at the rate of \$2.50 per acre, \$250,000 of the amount to be expended in the purchase of stock cattle for the benefit of the Indians and the balance to be paid per capita in cash in five annual installments.

A bill for the ratification of this treaty and opening the lands to settlement and entry was reported by this committee favorably. A similar bill passed the Senate, was referred to this committee, and was also unanimously

reported, and both bills have been upon the Calendar of the House for passage for some time. The present bill proposes to adopt a new policy in acquiring lands from the Indians, and it provides that the lands shall be disposed of to settlers under the homestead and town-site laws, and to be paid for by the settlers, and the money to be paid to the Indians only as it is received in payment for the land from the settlers. It provides that \$250,000 shall be expended for the purchase of stock cattle, as the original treaty provides, and not more than \$500,00 shall be expended for or paid to the Indians with two years, and not more than \$150,000 shall be expended per year thereafter until the expiration of the five years.

This provision is for the protection of the Indians and to prevent them from receiving the full proceeds from the sale of these lands before five years. The bill also provides that section 16 and 36, or the equivalent of two sections in every township, shall be ceded to the State of South Dakota for school purposes and paid for by the United States at \$2.50 per acre, and an appropriation of \$90,000 is made for this purpose. This provision is in conformity with the guaranty given to the State of South Dakota by Congress in the enabling act, which provides that in any reservations opened to settlement subsequent to the admission of the State into the Union sections 16 and 36 would be reserved and ceded to the State for school purposes.

The provision of the bill for payment of the lands by settlers, in installments, 50 cents per acre when entry is made, and the balance in four payments of 50 cents per acre, is deemed a wise one, as it will make it easy upon the settler to pay for his land, and will also provide a fund to pay the Indians an annual per capita cash payment. Section 5 of the bill provides that it shall be of no effect until it is assented to and accepted by

three-fourths of the male adult Indians over 18 years of age, which provision is in accordance with the twelfth article of the treaty between the United States and the Sioux Indians concluded April 29, 1868, and while it is probably true that it is not necessary to secure the consent of the Indians in enacting legislation affecting them, in view of the treaty stipulation aforesaid, the committee have concluded that it would be better to require the treaty as amended to be accepted by the Indians before it becomes effective.

The lands are agricultural and desirable, and will probably all be filed upon and paid for, but for fear there might be some tracts undesirable for homesteads a provision is made in the bill by which, under rules and regulations to be prescribed by the Secretary of the Interior, the undisposed of portions may be sold at public auction to the highest bidder, in tracts not exceeding 160 acres to one person, who must be a citizen of the United States.

The committee are of the opinion that the bill is in every way fair to the Indians and also to the United States, and that the terms by which the lands may be acquired by settlers are not unreasonable, and therefore urge the passage of the bill. The agreement, as originally made with the Indians, which is a part of the bill, was approved by the Commissioner of Indian Affairs and the Secretary of the Interior, as will be shown by communications which are herewith submitted.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 23, 1901.

SIR: The office has the honor to acknowledge the receipt of a letter dated October 11, 1901, from the

Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement dated September 4, 1901, with the Indians of the Rosebud Reservation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to that end were introduced. As aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the lands opened up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a United States Indian inspector with the Indians for the cession of portions of their respective reserves. Accordingly, under date of March 19, 1901, a draft of instructions was prepared by this office for the guidance of the United States Indian inspector conducting negotia-

tions with the Rosebud Indians for the lands referred to. Said instructions were approved by the Department on March 21, 1901, and Inspector McLaughlin detailed for the duty of conducting negotiations.

* * * * *

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted, situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 73 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed bloods, whether white bloods come from the paternal or maternal side, and the children born to them shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existing statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provision of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated September 14, 1901, and contains the signatures of James McLaughlin, United States Indian inspector, and of 1,031 male adult Indians of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement, to the effect that the provision thereof were fully explained by them to the Indians in open council, that it was fully understood by them before signing, and that the signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

* * * * *

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging to the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three-fourths of the male adult population of the reservation.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that while he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased; whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached.* * *

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres

unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek day school, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 398.67 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years will aid the Indians materially in providing for their family needs during that time, after which the matured cattle, the increase from the stock issued to them, will be marketable and will, with proper care, give them an annual revenue thereafter.

The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indians accept such provisions, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could not be made. The Indians insisted for a long time upon having the entire \$790,000 paid to them in cash in one payment; but the inspector says he finally succeeded in

getting their consent to its payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

* * * * *

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; the manner of payment was the best, both for the Indians and for the Government, that the Indians would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement. * * *

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this office from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the Inspector and the transcript of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the amount necessary to carry the provisions of articles 2 and 3 of the agreement into effect. * * *

W. A. JONES, *Commissioner*.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, December 6, 1901.

SIR: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office, ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully, E. A. HITCHCOCK,
Secretary.

The PRESIDENT PRO TEMPORE UNITED STATES
SENATE.

[#12]

(Letter of June 30, 1903 from Commissioner of Indian Affairs, Jones to Indian Inspector McLaughlin.)

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 30, 1903.

James McLaughlin, Esq.,
U.S. Indian Inspector,
Sir:

In a joint request to the Department dated April 4, 1903, the members of the South Dakota delegation in Congress, Senators Gamble and Kittredge and representatives Burke and Martin, asked that an Inspector be detailed to proceed to the Rosebud Indian reservation, in South Dakota, for the purpose of negotiating a new agreement with the Indians thereof for the cession of the unallotted portion of their reserve embraced in Gregory County, along the lines proposed in Senate Bill No. 7390, 57th Congress. By letter of the 18th instant Senator Gamble renewed this request, and by indorsement thereon dated the 24th instant the same was referred to this office by the Secretary of the Interior with directions "to prepare instructions for the guidance of Inspector McLaughlin in conducting negotiations with the Indians, for an agreement in substantially the same form as the modified agreement embraced in Senate Bill 7390, 57th Congress, 2nd Session."

The essential features of said S. 7390, with which you are already familiar, are as follows:

(1) That instead of paying the Indians the lump sum of \$1,040,000 for the surplus Gregory County lands as provided in the agreement of September 14, 1901, the lands be disposed of to settlers under the provisions of

the homestead and town-site laws, excepting sections 16 and 36 or the equivalent thereof, at not less than \$2.50 per acre, the proceeds arising from such sale to be paid to the Indians.

(2) That sections 16 and 36 in each township be reserved for the use of the common schools of South Dakota and paid for by the United States at \$2.50 per acre, and that in case said sections or any portions thereof shall have been allotted to the Indians or otherwise disposed of, the State shall have the privilege of selecting other vacant lands in lieu thereof within the ceded tract, such selections to be made prior to the opening of the lands to settlement.

(3) That of the proceeds arising from the sale of such ceded lands the sum of \$250,000 shall be expended in the purchase of stock cattle, the same to be issued to the Indians and distributed as equally as possible among the men, women, and children belonging to the reservation; provided that not more than one-half the money received in any one year shall be thus expended, the other half to be paid to the Indians per capita in cash, and an accounting, settlement and payment made to them in the month of October of each year until the lands are fully paid for and the funds distributed among them.

(4) That the price of said lands to homestead settlers shall be \$2.50 per acre, of which amount 50 cents per acre is to be paid at the time of entry; 50 cents per acre within two years from date of entry; 50 cents per acre within three years from date of entry; 50 cents per acre within four years from date of entry; and 50 cents per acre within six months from the date of expiration of five years after date of entry; and that if any entryman fails to make any of the payments within the time required all his rights shall cease at once and any payments theretofore made shall be forfeited and the entry shall be held

for cancellation, *unless* the Secretary of the Interior excuses for good cause the said failure to make payment, application for which must be made by the settler within thirty days after default.

(5) That all lands remaining undisposed of at the expiration of four years shall be sold at auction to the highest bidder for each under regulations to be prescribed by the Secretary of the Interior at not less than \$2.50 per acre in tracts not to exceed 160 acres to any one person.

(6) That the United States shall act as trustee merely for said Indians in disposing of the lands and in expending and paying over the proceeds derived from their sale and shall not be bound in any manner to purchase any of the said lands, excepting sections 16 and 36, or to dispose of the same otherwise than as proposed or to guarantee to find purchasers for the same or for any portion thereof.

Having assembled the adult male Indians of the reservation in council for the purpose, you will explain to them carefully the provisions, and especially the main features, of said Bill. No pains should be spared in making them fully acquainted with the general purport of the Bill, and the probable results of an agreement, if carried out, along the lines and on the terms proposed.

The agreement of September 14, 1901, was made on the basis of \$2.50 per acre for all the surplus unallotted Rosebud lands in Gregory County. It is recalled that during the councils when said agreement was concluded, the Indians were very persistent in their demands, almost to the very last, for a larger price for said lands. They insisted that the lands were worth \$5.00 per acre. Since then several petitions and letters have been received from these Indians earnestly protesting against the ratification of said agreement because of the inadequacy of the compensation, and asking that a new agreement be

entered into providing for a proper remuneration for their said lands. Letters from outside parties were also received indicating that the lands were worth a larger price than that agreed to be paid.

There can be no doubt that a large portion, at least, of the surplus land in question is worth considerable more than \$2.50 per acre. Necessarily, on the other hand, some of the land is undesirable and of such inferior quality as to render its disposition under the plans proposed in said Bill quite unlikely. It is therefore quite probable that the total amount realized by the Indians under the plan now proposed must fall considerably short of the \$1,040,000 agreed to be paid them in the former agreement, for it is doubtful whether much, if any, more than \$2.50 per acre *cash* could be secured at auction for any of the inferior lands remaining undisposed of under the homestead law with privilege of deferred payments at the end of four years, while necessarily some of it could not be disposed of at all for that price.

These points should be plainly presented to the Indians and fully discussed with them. They should be made to understand that the Government proposes, aside from the purchase of sections 16 and 36, to act merely as trustee in the transaction, and that it assumes no risks and takes no responsibility, other than to collect and disburse the moneys. The method proposed for disposing of these lands is a new departure, and it is therefore specially desirable that the matter should be thoroughly understood by the Indians before they enter into an agreement along the lines proposed, so that the possibility of future disappointment may be reduced to a minimum, and all ground for complaint hereafter removed.

If after full discussion, they are willing to enter into an agreement on the plan proposed in said Bill, and on terms that seem to you to be just and fair to the Indians and

that will, so far as may be, preserve their rights and interests and secure for them adequate compensation for their lands, you will reduce the matter to writing and present it to them for their signatures.

The terms of any agreement concluded should not only be such as will provide for the payment to the Indians of a just and fair price for their lands, but as will render payment therefor as certain as may be. It is true that said Bill provides for the forfeiture of the settler's land in case of default, *unless* the Secretary of the Interior grants an extension of time within which to make payment. The clause as to such extension is, however, indefinite and it is suggested that in any new agreement concluded it would be well to insert a provision to the effect that an extension may be granted by the Secretary of the Interior for a period of *not to exceed six months*, and that *default to meet the payment within that time shall work the absolute forfeiture of the entry*. From past experience it is believed that, unless the provisions bearing on this point are made most positive and rigid, dissatisfaction and disappointment on the part of the Indians will be the probable result. The possibility of such a result should be averted as far as possible, and it is felt that a long step in that direction will be taken if no accumulation of payments by the settler be permitted and no postponements allowed for a full year. The office is aware that in the past the usual plea of the settlers for more time had been based on failure of crops, but no good reason is seen why the Indians should be required to suffer the consequences of any crop failures or adversity in other forms that may come to the settler, and it is believed that if he knows he must meet the payments when they come due, that he will do so.

In any agreement concluded provision should be made either for the payment by the Government for lands now

occupied for church, mission and school purposes and for sub-issue station, or for the reservation of the same by the Indians.

If provision be made in any agreement concluded for the purchase by the United States of sections 16 and 36, or their equivalent, with the view to the donation of the same to the state for school purposes it is suggested that such provision should be expressed conditionally.

It is not deemed necessary herein to give you any definite instructions as to the form of the agreement and the manner of its execution inasmuch as you are thoroughly familiar with these features of the subject. Attention is invited in this connection, however, to Departmental instructions to you dated March 21, 1901, in connection with the negotiation of the former agreement.

There being no funds available to pay expenses in connection with these negotiations, it will be necessary for you to call upon the U.S. Indian Agent of the Rosebud Agency for such assistance you may require and for co-operation in conducting the proposed negotiations.

Should there be any point upon which you desire further instruction the Department should be promptly advised of the fact and request made therefor.

For your use there is enclosed herewith a copy of said S. Bill No. 7390.

Very respectfully,
W. A. JONES
Commissioner.

JRW-S

Approved:

Secretary.

[#13]

(Minutes of Council, July 24, 1903 to Aug. 10, 1903)

[1] Minutes of council held at Rosebud Agency, S. D. by James McLaughlin, U.S. Indian Inspector; with the Sioux Indians belonging on the Rosebud Reservation, S. D. in reference to the cession by said Indians of their unallotted lands in Gregory County, S.D.

Council convened Friday, July 24, 1903, at two o'clock, P.M. with Agent McChesney and about seventy-five Indians in attendance.

AGENT McCHESNEY:-

Louis Bordeaux interpreting,

I know that it is a pleasure for you as well as for me to have Inspector McLaughlin with you again. The Inspector is here at this time in regard to negotiations for the cession of Gregory County. Exactly what he has to submit to you, I do not know; as he has been here but a short time, and I have not conversed with him on the subject; but Inspector McLaughlin will inform you presently as to the object of his visit and the proposition he has to submit to you. You all know the Inspector. He is your friend, and it is entirely unnecessary for me to introduce him to you. I hope that you will consider well all that he has to say to you.

INSPECTOR McLAUGHLIN:-

My friends, I am very glad to meet you today. I have been sent here by the Secretary of the Interior to present to you a modification of the agreement we entered into two years ago, for your unallotted Gregory County lands. I telegraphed your Agent last Monday that I would meet you in council here today, and I know that it has been very difficult for those living great distances from the Agency to reach here, and therefore am not disappointed at finding so few of you present. However, that I may

keep my promise and hold our first council today, I have thought it proper to meet those of you who are here and explain the object of my visit; but I do not deem it best to go into a full explanation of the question, until a larger number are here, and will therefore not go into details until [2] tomorrow at One o'clock. I desire to explain the matter very clearly so that all of you may understand the question placed before you for consideration, and I would like to have as many of you here as possible during the council, when I submit the proposition; so that you will receive the information direct from me and not through a third party, and I therefore think it best that we now adjourn to meet tomorrow afternoon at One o'clock. I hope to have all of you who are here today and a great many more tomorrow. Bring as many as you can with you, so that there may be a good representative council.

I wish to say before closing that I am not here to force anything upon you against your will. I am here to explain matters fully and clearly, that every one of you may understand what I place before you, so that you may consider the matter understandingly and then give me your answer. Any information that you may desire on any point, I will cheerfully give it so that you may understand every phase of the question. It is a lengthy bill and to start in to explain it this evening, we could not get through it today and furthermore I would feel it my duty to repeat it again when the council was a larger representative one, and for that reason we will adjourn until One o'clock tomorrow afternoon. I wish to thank those of you who are here for being so prompt to respond to the notification to assemble here today.

HOLLOW HORN BEAR:-

I wish to say something. We knew that we were coming here to meet you, just like one belonging to the tribe, and

we thank you for coming to see us. You see only a few men here. The Great Father has told us to go to work, so many of us are working. Laboring men like their labor money and don't want to lose it, and these men present represent the laboring men and are here to do business for them. About the middle of next week we will have to stop working and I don't believe that a lot of people will come in tomorrow for this council. I think that each Issue Station should talk it over first and then come here to settle it. We could select some men to [3] represent us, who could come here to talk with you, and another thing we are not in a hurry to have a council with you and do this business running. You were here two years ago to do this business but we did not accomplish it running. You will see my good friend, also our Agent, that we should go home and talk it over at the Issue Stations and let us have councils so that we can think the matter over. And now you and our Agent decide upon how many men you desire as representatives to discuss this matter for the men at home at work. There will be no more men here tomorrow than today.

INSPECTOR McLAUGHLIN:-

The suggestion made by Hollow Horn Bear is very good, with one exception, which I will explain. I see that you men here are representative men of the districts in which you reside, and whatever you may hear from me, you could announce in your respective districts and explain to your people; and I approve of your counciling in your camps, but it is necessary for you to first know what you are counciling about to have your councils be of any benefit. Following out the suggestion of Hollow Horn Bear, we will meet tomorrow at an earlier hour than first announced and I will explain the provisions of the bill to you and you can then return home and explain to those of each district and elect representative men for the

council, and send them here for next Tuesday at One o'clock. We will meet here tomorrow morning at nine o'clock. Is that satisfactory?

COUNCIL:- Yes.

INSPECTOR McLAUGHLIN:-

Very well. We will now adjourn until Nine o'clock tomorrow morning. Council adjourned at 4:45 P.M. July 24, 1903.

Council reconvened at Nine o'clock A.M. July 25, 1903; Agent McChesney and about 130 Indians being present.

INSPECTOR McLAUGHLIN:-

I am pleased to see so many of you here this morning and I will now explain the bill which I am directed to present to you for your consideration.

[4] I will now read the bill to you. (Reads Senate Bill No. 7390, 57th Congress, 2nd Session, from Pages 5 to 10 inclusive, which was interpreted to the Indians by Louis Bordeaux as it was read by the Inspector)

INSPECTOR McLAUGHLIN:-

My friends, I have now explained the bill to you for your consideration. It is proposed to have this bill enacted into law at the next session of Congress, but before its enactment, it is the desire of the Secretary of the Interior to submit it to you for your consideration and concurrence. I have endeavored to make plain to you the different features of the bill as I read it to you, but it is very probable that many of you may not have understood every sentence, and I am here to explain the meaning of each sentence, the full import of every paragraph and section of the bill.

I deem it necessary to explain to you why the agreement entered into with you two years ago was not ratified. I transmitted that agreement to the Secretary with a strong recommendation that it be approved. The

Secretary referred it to the Commissioner of Indian Affairs for report and he returned it to the Secretary with his approval. The Secretary approved it and transmitted it to Congress with a strong recommendation that it be ratified. It was taken up by the Senate, referred to the Senate Indian Committee, and passed that body after some discussion. In the House it was referred to the Indian Committee where it was favorably considered; but met with opposition in the full House. I was in Washington, a year ago last winter, when the agreement was under consideration, and know that every man composing the delegation from this state did everything possible to have that agreement ratified.

Senator Gamble is a member of the Senate Indian Committee and Congressman Burke is a member of the Indian Committee of the House, and both worked very hard to bring about the ratification of the agreement. They were supported by Senator Kitttridge and Congressman [5] Martin, but there were members of the House who were opposed to the ratification of your agreement, not that it was considered unfair or unjust, but because there were seven other similar agreements, eight in all, that were before Congress for ratification. If one of them should be ratified, the other seven would have to be similarly treated.

There has been a sentiment growing in Congress for a number of years past, and is now stronger than ever, against paying Indians for ceded lands direct from the U.S. Treasury. This is what is referred to in my letter of instructions, which I read to you, as being a new departure in the manner of disposing of the surplus lands of Indian reservations, and instead of paying Indians direct from the U.S. Treasury as heretofore for their surplus lands; they will be paid from the proceeds of the sale of the lands ceded; the Department thus acting as

trustee for the Indians, and the Interior Department having charge of the lands will dispose of them in such manner as will secure to the Indians the highest price obtainable. This is the new departure referred to, and I believe, my friends, that no treaty will ever again be made with Indians, by which they will receive a lump sum consideration for the tract ceded, but only what the Government is able to realize from the sale of the lands. You must look at this matter clearly and without prejudice and I want you all to consider it with great care.

I regard it, under the circumstances, and considering everything in connection with it, a very nice compliment to you people for the Department to send an Inspector to you again to council with you; for the reason that a decision of the Supreme Court of the United States, which court is the interpreter of all our laws, rendered on January 5th last, in what is known as the Lone Wolf case, that the Indian is the ward of the Government; that the Government is the guardian; that the guardian has the right to do that which is deemed best for the ward, therefore Congress has the power to enact legislation for the surplus lands of Indians, without consulting the Indians. But this is not the wish of the Secretary of the Interior, or Commissioner of [6] Indian Affairs, nor of the Congressional delegation from this state; they wish to consult the Indians. Now, my friends, the matter for you to consider is whether you will accept the modification of this agreement or not. I fully believe that your agreement of two years ago, will never be ratified, owing to the sentiment prevailing in Congress at the present time, which sentiment is not likely to change; therefore the only question before you is, whether or not you will cede the same tract of land, and have the Government dispose of it without charge to you, and the money to be

Supreme Court, U. S.
FILED

AUG 9 1976

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPENDIX
[Volume II – Pages 473-944]

PETITION FOR CERTIORARI FILED OCTOBER 11, 1975

CERTIORARI GRANTED MAY 24, 1976

(i)

TABLE OF CONTENTS

Page

Docket Entries	1
Amended Complaint	3
Answer of Defendant Counties of Mellette, Lyman, Tripp, and Gregory (10/10/72)	9
Answer of Defendants, Honorable Richard Kneip and Gordon Mydland (10/16/72)	12
Order Adding Parties Defendant (1/11/73)	27
Answer of Defendant United States (3/21/73)	28
Notice of Appeal (3/13/74)	30
Stay of Mandate (8/25/75)	32

Entry

#1	H.R. 4740 56th Cong. 1st Sess. (1899)	33
#1A	33 Cong. Rec. 380 (1899)	40
	33 Cong. Rec. 291	40
	33 Cong. Rec. 594	40
	33 Cong. Rec. 2521	40
#1B	H.R. Rep. No. 486, 56th Cong. 1st Sess. (1900) ..	42
#2	33 Cong. Rec. 380 (1899)	47
	33 Cong. Rec. 54	47
	33 Cong. Rec. 561	47
#3	34 Cong. Rec. 152 (1901)	48
	34 Cong. Rec. 3556	48
#4	March 19, 1901 letters to Sec. of Interior and Indian Inspector McLaughlin from W. A. Jones Commissioner of Indian Affairs	51
#5	35 Cong. Rec. 377 (1901-1902)	59
	35 Cong. Rec. 81	59
	35 Cong. Rec. 751	60
	35 Cong. Rec. 2477	60

(ii)

Entry	Page
35 Cong. Rec. 2717	60
35 Cong. Rec. 2882	61
35 Cong. Rec. 3187-3188	61
35 Cong. Rec. 3450	71
35 Cong. Rec. 3541	71
35 Cong. Rec. 3556-3557	72
35 Cong. Rec. 4424-4425	72
35 Cong. Rec. 4569	73
35 Cong. Rec. 4608	74
35 Cong. Rec. 4715	75
35 Cong. Rec. 4750	75
35 Cong. Rec. 4800-4807	76
35 Cong. Rec. 4855-4862	112
35 Cong. Rec. 4911-4918	152
35 Cong. Rec. 4963-4971	195
35 Cong. Rec. 5013	236
35 Cong. Rec. 5019-5024	237
35 Cong. Rec. 5198	273
35 Cong. Rec. 5613-5614	273
#5A S. Rep. No. 662, 57th Cong. 1st Sess. 1-6 (1902) ..	274
#5B H.R. Rep. No. 2099, 57th Cong. 1st Sess. 1-4 (1902)	289
#6 35 Cong. Rec. 377 (1901-1902)	299
35 Cong. Rec. 412	299
35 Cong. Rec. 680	299
35 Cong. Rec. 2814	300
#6A H. R. Rep. No. 954, 57th Cong. 1st Sess. 1-4 (1902)	301
#7 35 Cong. Rec. 377 (1901-1902)	310
35 Cong. Rec. 245	310
35 Cong. Rec. 206	310
35 Cong. Rec. 1279	311
#7A S. Doc. No. 31, 57th Cong. 1st Sess. 1-43 (1901) .	312
#8 35 Cong. Rec. 377 (1901-1902)	410
35 Cong. Rec. 747	410

(iii)

Entry	Page
#9 35 Cong. Rec. 377 (1901-1902)	413
35 Cong. Rec. 4706	413
#9A S. Doc. 324, 57th Cong. 1st Sess. 1-7 (1902)	414
#10 36 Cong. Rec. 148 (1902-1903)	430
36 Cong. Rec. 141	430
36 Cong. Rec. 2409	430
36 Cong. Rec. 2473	431
#10A H.R. Rep. No. 3839, 57th Cong. 2d Sess. 1-5 (1903)	432
#11 36 Cong. Rec. 148 (1902-1903)	443
36 Cong. Rec. 51	443
36 Cong. Rec. 2434	444
36 Cong. Rec. 2498	444
36 Cong. Rec. 2502	444
36 Cong. Rec. 2747-2748	445
36 Cong. Rec. 3074	449
#11A S. Rep. No. 3271, 57th Cong. 2d Sess. 1-5 (1903) .	450
#12 Letter of June 30, 1903 from Commissioner of Indian Affairs Jones to Indian Inspector McLaughlin	461
#13 Minutes of Council, July 24, 1903 to Aug. 10, 1903	467
#13A Excerpt from Report of the Commissioner of In- dian Affairs 1901. Letter dated Aug. 15, 1901 from the Supt. to the CIA	523
#14 36 Cong. Rec. 148 (1902-1903)	525
36 Cong. Rec. 1559	525
36 Cong. Rec. 626	527
#14A Excerpt from letter dated Aug. 31, 1903 from Inspector James McLaughlin to the Sec. of the Interior (N.A. Group 48, Records of the Office of the Sec. of the Int., Ind. Div.) ...	528

(iv)

<u>Entry</u>	<u>Page</u>
#14B Excerpts from Report of the Commissioner of Ind. Affairs, 1903	530
#15 Act of April 23, 1904 ch. 1484, 33 Stat. 254 ...	531
#15A 38 Cong. Rec. 268 (1904)	541
38 Cong. Rec. 275	541
38 Cong. Rec. 902-903	541
38 Cong. Rec. 1010	542
38 Cong. Rec. 1292-1293	542
38 Cong. Rec. 1421-1429	543
38 Cong. Rec. 1467	592
38 Cong. Rec. 1468	592
38 Cong. Rec. 1469	592
38 Cong. Rec. 1601	593
38 Cong. Rec. 4984-4988	593
38 Cong. Rec. 5155	626
38 Cong. Rec. 5214	627
38 Cong. Rec. 5218	627
38 Cong. Rec. 5287	628
38 Cong. Rec. 5447	628
#15B H.R. Rep. No. 443, 58th Cong. 2d Sess. 1-19 (1904)	629
#15C S. Rep. No. 651, 58th Cong. 2d Sess. 1-12 (1904) .	678
#15D S. Doc. No. 158, 58th Cong. 2d Sess. 1-7 (1904) .	709
#16 38 Cong. Rec. 268 (1904)	724
38 Cong. Rec. 71	724
38 Cong. Rec. 1100	724
38 Cong. Rec. 1877	725
#17 38 Cong. Rec. 2827-2832 (1904)	726
#18 History of the Chicago & North Western Railway System	762
#19 Act of Feb. 7, 1905 ch. 545, 33 Stat. 700	763
#20 41 Cong. Rec. 241 (1906-1907)	765
41 Cong. Rec. 286	765
41 Cong. Rec. 2800	765

(v)

<u>Entry</u>	<u>Page</u>
#21 Minutes of Council from Dec. 14 to Dec. 20, 1906 & Jan. 17 to Jan. 21, 1907	766
#21A Excerpt from letter dated Feb. 12, 1907 from Inspector McLaughlin to the Sec. of the Interior (N.A. Group 75, BIA letters received, 1881-1907, 17945 Land (1907)	868a
#22 Act of March 2, 1907 ch. 2536, 34 Stat. 1230 ...	869
#22A 41 Cong. Rec. 241 (1906-1907)	875
41 Cong. Rec. 268	875
41 Cong. Rec. 1782	876
41 Cong. Rec. 3004	876
41 Cong. Rec. 3103-3105	877
41 Cong. Rec. 3182-3183	888
41 Cong. Rec. 3264	892
41 Cong. Rec. 3323	892
41 Cong. Rec. 3552	893
41 Cong. Rec. 3996	894
41 Cong. Rec. 4120-4121	895
41 Cong. Rec. 4312	897
41 Cong. Rec. 4316	898
41 Cong. Rec. 4402	898
41 Cong. Rec. 4630	898
#22B H.R. Rep. No. 7613, 59th Cong. 2d Sess. 1-8 (1907)	899
#22C S. Rep. No. 6838, 59th Cong. 2d Sess. 1-7 (1907) .	915
#22D H.R. Rep. No. 8109, 59th Cong. 2d Sess. 1-2 (1907)	931
#23 Letters of Dec. 5, 1906 to the Sec. of Int. & J. McLaughlin from the Commissioner of Indian Affairs, F. E. Leupp.	933
#24 41 Cong. Rec. 241 (1906-1907)	943
41 Cong. Rec. 38	943
41 Cong. Rec. 15	943

(vi)

<u>Entry</u>	<u>Page</u>
#25 Letter of Dec. 19, 1906 to Sec. of Interior from Comm. Leupp	944
#26 41 Cong. Rec. 24 (1906-1907)	949
41 Cong. Rec. 27	949
41 Cong. Rec. 50-51	949
41 Cong. Rec. 3207	950
41 Cong. Rec. 3323	950
41 Cong. Rec. 4105	951
#26A S. Rep. No. 6831, 59th Cong. 2d Sess. 1-5 (1907) ..	952
#27 Letter of Dec. 15, 1906 to the Sec. of Int. from Commissioner Leupp	962
#28 41 Cong. Rec. 241 (1906-1907)	973
41 Cong. Rec. 3858-3861	973
#29 42 Cong. Rec. 494, (1907-1908)	983
42 Cong. Rec. 174	983
42 Cong. Rec. 3777	983
42 Cong. Rec. 4211	984
42 Cong. Rec. 4404-4405	984
42 Cong. Rec. 4482	988
#29A S. Rep. No. 440, 60th Cong. 1st Sess. 1-2 (1908) ..	989
#30 43 Cong. Rec. 228 (1908-1909)	992
43 Cong. Rec. 27	992
43 Cong. Rec. 65	992
43 Cong. Rec. 1559	992
43 Cong. Rec. 1679	993
#30A S. Rep. No. 887, 60th Cong. 2d Sess. 1-4 (1909) ..	995
#31 Letter of Feb. 10, 1909 to Senator Clapp from the Sec. of Interior	1002
#32 44 Cong. Rec. 268 (1909)	1007
44 Cong. Rec. 5	1007
44 Cong. Rec. 132	1007

(vii)

<u>Entry</u>	<u>Page</u>
#33 44 Cong. Rec. 268 (1909)	1008
44 Cong. Rec. 315	1008
44 Cong. Rec. 2013	1008
#34 Excerpt from letter dated April 2, 1909 from the first Asst. Sec. of the Int. to Inspector Mc- Laughlin (N.A. Group 75, BIA, Central File 1907-39, File 24400-09-3081, Pine Ridge ...	1009
#34A Minutes of Council of Mar. 11, 1909 and April 21, 1909	1011
#35 Act of May 30, 1910 ch. 260, 36 Stat. 448	1044
#35A 45 Cong. Rec. 295 (1909-1910)	1052
45 Cong. Rec. 2	1052
45 Cong. Rec. 668	1053
45 Cong. Rec. 905	1053
45 Cong. Rec. 958	1053
45 Cong. Rec. 1012-1013	1054
45 Cong. Rec. 1065-1071	1055
45 Cong. Rec. 1073-1075	1091
45 Cong. Rec. 1215	1103
45 Cong. Rec. 1752	1104
45 Cong. Rec. 5456-5473	1104
45 Cong. Rec. 5483	1203
45 Cong. Rec. 5538	1204
45 Cong. Rec. 6324-6326	1205
45 Cong. Rec. 6379-6381	1213
45 Cong. Rec. 6415-6416	1223
45 Cong. Rec. 6436-6437	1225
45 Cong. Rec. 6496	1233
45 Cong. Rec. 6517	1234
45 Cong. Rec. 7128-7129	1234
#35B S. Rep. No. 68, 61st Cong. 2d Sess. 1-5 (1910) ...	1235
#35C H.R. Rep. No. 429, 61st Cong. 2d Sess. 1-5 (1910) .	1246
#35D H.R. Rep. No. 1368, 61st Cong. 2d Sess. 1-5 (1910).	1257

(viii)

<u>Entry</u>	<u>Page</u>
#36 Letter of Feb. 25, 1910 to President Taft from Rosebud Indian Tribal Council	1266
#37 45 Cong. Rec. 295 (1909-1910)	1267
45 Cong. Rec. 147	1267
45 Cong. Rec. 10	1267
45 Cong. Rec. 1135	1268
45 Cong. Rec. 5476	1268
#37A H.R. Rep. No. 332, 61st Cong. 2d Sess. 1-5 (1910) ..	1270
#38 Letter of Jan 13, 1910 to Congressman Burke from the Sec. of the Interior	1280
#39 46 Cong. Rec. 147 (1910-1911)	1283
46 Cong. Rec. 14	1283
46 Cong. Rec. 55	1283
#40 Letter of Nov. 12, 1910 to Mr. Schofield from the 2d Asst. Commissioner of Indian Affairs	1284
#41 Series of letters between Mr. Derig & the 2d Asst. Commissioner of Ind. Affairs	1286
#42 Minutes of Council of Nov. 1, 1911	1290
#43 Act of Aug. 17, 1911 ch. 22, 37 Stat. 21	1300
#44 49 Cong. Rec. 109 (1913)	1302
49 Cong. Rec. 3	1302
49 Cong. Rec. 2209	1302
49 Cong. Rec. 4210	1303
#44A S. Rep. No. 1166, 62d Cong. 3d Sess. 1-5 (1913) ..	1307
#45 Letter to Senator Gamble from Sec. of Interior ...	1318
#45A Letter dated April 26, 1913 from Supt. Rosebud Indian Agency to CIA	1320
#45B Excerpts from letter dated Sept. 18, 1913 from the Supt. Rosebud Ind. Agency to the CIA	1324
#46 49 Cong. Rec. 109 (1913)	1326
49 Cong. Rec. 60	1326
49 Cong. Rec. 2525	1326

(ix)

<u>Entry</u>	<u>Page</u>
#47 49 Cong. Rec. 109 (1913)	1327
49 Cong. Rec. 64	1327
49 Cong. Rec. 3305	1327
#48 Petitions in opposition to H.R. 28606	1328
#49 Letter of Dec. 9, 1915 to Sec. of Int. from Comm. of Ind. Affairs	1356
#50 Series of 1915 letters between G. Van Meter and Dept. of Interior	1361
#51 Act of March 3, 1919, Public No. 338, 40 Stat. 1320	1373
56 Cong. Rec. 9490	1373
57 Cong. Rec. 1838-1839	1374
57 Cong. Rec. 4784	1376
#51A H.R. Rep. No. 742, 65th Cong. 2d Sess. 1-2 (1918) .	1377
#51B S. Rep. No. 745, 65th Cong. 3d Sess. 1-2 (1919) ..	1386
#52 Excerpt from the report of the General Accounting Office filed July 12, 1934 in the Court of Claims Docket No. C-531	1393
#53 Excerpts from the Constitution of the Rosebud Sioux Tribe	1394
#54 Memorandum dated April 6, 1972 from the Field Solicitor, Aberdeen, S.D. to the Area Direc- tor, Aberdeen, BIA	1398
#55 Letter dated August 23, 1974 from the Acting Area Director, Aberdeen, S.D. BIA to Neil Proto, Esquire, Department of Justice	1405
#56 Excerpts from instruments from National Archives Record Group N.75, Central Files, 1907-1921, Bureau of Indian Affairs	1409

paid into the Treasury if it is disbursed under the provisions of this bill. This is my only business here at this time and I am ready to answer any questions you may wish to ask after considering the matter among yourselves. I do not expect a decision from you in an hour, or a day, or even three days. You need to think it over carefully and come to me to explain any question that may arise, which you may not fully understand.

My friends, I wish to say that when I am assigned to any duty of this kind, if I have no faith in it, I simply present it to the Indians and accept their answer, but if I have faith in it, I feel it my duty to urge its acceptance. I will be frank and truthful and make no misleading statements, so that should I return here again at any time, I will not be ashamed to look you each and all in the face and take you by the hand. The suggestion made last evening by Hollow Horn Bear that you would like to have the matter explained and then return to your homes and discuss it among the people of the several districts, is very good, and if that is your wish, we will adjourn until next Tuesday at one o'clock; but in the meantime, if you have any points you would like to have more clearly explained, I will respond to your call at any time.

(Hollow Horn Bear speaks to the Indian assemblage. Not interpreted)

HOLLOW HORN BEAR:-

I think the time is too short to hold the next council on Tuesday.

STRANGER HORSE:-

I want to say something. We live a long distance from here. [7] Our business is of great importance. You are from Washington and we need some money to provide us with rations during these negotiations. We do not want to do this running. We have to take our time and now that you are here, you ought to explain to the young men

who are working, and we can't get home and have a council in one day, that is impossible. I think that you should stay until we have plenty of time to settle the matter. We don't want to leave any one out and have dissatisfaction. I think that we ought to have a council member come to get our money the last of the month. Our Agent has taken care of a large number of people and when we come together, he ought to give us rations. If the Agent will give us permission to sell some beef at all of the Issue Stations, we can make a feast. We are here to see one another with a good heart and when we go home we ought to have a feast and do everything nice and smooth and polite. This bill is modified, and we have to talk about it so that we can understand. We ought to have a copy of the bill to take to each one of the Issue Stations and have it read and considered.

INSPECTOR McLAUGHLIN:-

I wish to say to Hollow Horn Bear that I had in mind the Issue Stations near the Agency—Cut Meat, Black Pipe, etc., when I set the time for the council for next Tuesday, but I believe the suggestion that it be a day later is quite reasonable. The reason I thought that Tuesday would be better than a day later, was because my friend, Hollow Horn Bear, said that the Indians were so busy working, and I did not want to take any more time from them than necessary, but as both speakers have said, we don't want to do this "running". I don't want to hurry you but give you ample time, but after you consider the matter in your respective districts, you ought to come together here to talk the matter over in a council, so that I can be with you and answer questions. To delay holding our council until next Friday would be the end of the month and we could not get through with the council in one day, so I think that Wednesday, say at One o'clock, would be the proper time and we may be able to get through by Saturday.

[8] As to giving a copy of this bill to each district council, as suggested by Stranger Horse—it would take a great deal of time and I doubt if you would understand it properly, if you had it. It would be much better for you to send for me when wanting the terms explained. You have heard the bill explained by me this morning, and you doubtless understand the substance of it. You can now go to your respective district councils, return here next Wednesday and I will then turn the copy of the bill over to you. There will be young men in the council who can read it, and you can also call upon me to explain any portions not clearly understood by you. Stranger Horse suggests that I have money at my disposal and could furnish you with subsistence. The Department has advised me that there are no funds available to pay expenses in connection with these negotiations and therefore I refer you to your Agent. I have met many Agents in my travels among Indian tribes, some of very large stature, but none with larger hearts than your Agent.

If you have nothing further to say at present, we will adjourn the council to meet again at One o'clock on Wednesday afternoon, July 29, 1903.

Council adjourned at 11 o'clock, A.M. July 25, 1903.

Council reconvened at 4 o'clock, July 29, 1903, with Agent McChesney and about 130 Indians present.

INSPECTOR McLAUGHLIN:-

Louis Bordeaux, interpreting,

My friends, we meet today as agreed upon at adjournment last Saturday; you having requested the four day's adjournment that you might council among yourselves. I would have been pleased to see more of your people present today, but I will talk with those of you who are present. I have already explained the bill which is to be the basis of the new agreement, and you having been in council among yourselves the past four days, you are

doubtless prepared to give me an answer. If you are not prepared to give me a definite answer, you probably desire to ask questions on some of the features of the bill which you may not understand. As I told you in our first council, I [9] don't wish to hurry you, I want to give you ample time so that you may consider the matter and understand it clearly; but desire to conclude our negotiations as soon as possible.

Remember the question before you is the cession of the unallotted portion of your Gregory County lands, which was embraced in our agreement of two years ago; and while I do not wish to hurry you, I would like to have our business concluded without unnecessary delay. If you have not reached any conclusion and want information on any point, I will endeavor to make it clear to you. I am now ready to hear from you as to what the outcome of your council has been, and any questions you may ask I will answer to your satisfaction.

HOLLOW HORN BEAR:-

My friend, some days ago, I had a talk with you, the Agent and Inspector, we all feel that you are our friends, we regard you as we would members of our own tribe; we trust you as we would our own people. We are going to ask some questions and have you make answers to them. Two years ago, the 14th day of September, I came here to talk with you. You were here with an agreement at that time and you told us that if any clause of the bill was not acceptable, it would not be ratified. It would have to be ratified as a whole, or rejected as a whole. Did we not understand you to say that if the treaty was not ratified, we would have the land back again?

INSPECTOR McLAUGHLIN:-

The land stands just as it was before, that is the status of the land is just as before. Congress did not ratify the agreement.

HOLLOW HORN BEAR:-

The treaty was in twelve sections, and you told us that if three-fourths of the Indians did not consent, it wouldn't go, the land would belong to us. You got three-fourths of us to consent—it was not your fault, the Great Father has made a big mistake. If the Great Father made a mistake when he sent you to us with the treaty, and wants to take his money back, he can do so, and we will take our land back. You told us if Congress did not ratify the treaty, it [10] would be all right for us to take this land back, and we ask you to act for us and we depend on you to see that we get the land back.

BULL NATION:-

You remember what you said once before when you were here to make the treaty with us. If Congress don't comply with the treaty, the land comes back to us. I remember all this, and the Great Father stayed back on one side with his money and we stay back on the other side with our land. There is nothing more to do.

REUBEN QUICK BEAR:-

On last Saturday you were with us in council, and had the papers with you and read and explained them to us. You told us to go home and council with the Indians at home at the Issue Stations. Two years ago, you came here and made a treaty with us, telling us that if there was any clause in the treaty that Congress did not comply with, the land would be ours just the same as before. You know that we have decided to take the land and hold it, it belongs to us. We have decided that today.

LITTLE THUNDER:-

Here are all the Indians. We are poor, you know that. You told us that we could sell the land to the Great Father, and we would get lots of money for it, we would get rich. Congress did not comply with the terms of the treaty, and we have all come to the conclusion that we

take our lands back as they belong to us. We all feel that way about it.

INSPECTOR McLAUGHLIN:-

My friends, I wish you all to understand that every word that is being said by you and myself is being taken down by the stenographer. It is transcribed into typewriting, like this page, and will form a part of my report. It is sent to the Secretary and he is able to read all that is said here at this council. These eight pages are the transcript of our first two councils. I will read and repeat what I have said to you, taking the third paragraph on the fourth page. This has reference to why your agreement of two years ago was not [11] modified. (Reads paragraph which is interpreted by Louis Bordeaux)

Congress is willing to pay you the same amount as was provided by that agreement but in a different manner than that provided by the wording of that agreement. I will read to you what I said in our last council, every word of which is true. (Reads from minutes of council held on Saturday, July 29th.)

The Secretary will obtain the best price possible for the land ceded. I told you before that a lump sum of money would never again be stipulated for the payment of Indian reservation lands; and that all surplus lands that Indians were not using or did not need would be opened to settlement by Congress, and every statement that I made to you last Saturday, can not be truthfully contradicted by any person. I shall tell you nothing but the truth and will use no words that are misleading. A few of the important provisions of this bill have been questioned by certain persons here and the report circulated among your people that my presentation of the bill was not all true, and you have been told that I was not authorized or instructed to make such statements. I desire to read and repeat again, what I told you

in last Saturday's council and, as facts and truth, stand by same without fear of contradiction. (Reads from minutes of council held on Saturday, beginning: "I consider it a very nice compliment" etc.,)

As I told you last Saturday, It is not the wish of the Secretary or the Commissioner nor of the Congressional delegation from this state to legislate for the opening of that tract of land without first consulting you Indians. I was very much pleased with the agreement entered into with you two years ago, although you will recall that I met with a great deal of opposition when negotiating that agreement. I gave you a fair price for your lands and protected you in every provision of the agreement.

My friend, Hollow Horn Bear asked me if the treaty was now of any effect, it having failed of ratification. I wish to answer that.

You will remember that I said at the time that it required two [12] parties to every bargain, that you, the Indians of this Agency, were one party and I, representing the Government in the negotiations, was the other party, but that any agreement concluded by us, would be of no force or effect until ratified by Congress.

You did your part, you met the requirements of the Department by entering into the agreement with me for that part of your lands at \$2.50 per acre. Congress was willing to accept the price but demanded a change in the manner of payment. The status of the land is just the same as it was two years ago, but I am here to try to enter into a new agreement, from which you will receive as much for your lands as the agreement of two years ago provided, but the manner of disposing of it is different. I can not promise you any definite sum to be paid at certain times as was stipulated in your other agreement, but I am here to promise you every cent that the land will bring under the provisions of the bill.

My friends, you will remember that in years past, five and ten cents per acre was paid for Indians' land, and by the agreement of 1889 you received fifty cents per acre for all that was not taken within the first five years, but here is an offer of \$2.50 per acre for it. The entryman has five years to pay for it, in five different installments. Fifty cents when he enters the land, fifty cents at the end of the second year, and fifty cents each year following, and the last fifty cents must be paid within 5 years and 6 months after date of the entry. Any man who enters that land and fails to make any of the payments, will forfeit the land and the money he may have paid in, and the land will be sold again for your benefit.

Sections 16 and 36 of each township is donated to the state of South Dakota for school purposes; that is, two sections out of every township. This does not concern you, the payment therefor is made to you direct from the U.S. Treasury, but the payment for the land that is homesteaded does concern you. The Government collects from the homesteader and pays it over to you. The bill also provides that all land not taken by actual homesteaders at the expiration of four years [13] will be sold at public auction to the highest bidders at a price not less than \$2.50 per acre. It provides for the same amount of money for the purchase of stock cattle as the agreement of two years ago did; and all the rest of the money received from the proceeds of the sale of the land is to be paid to you as provided in the first agreement. My friends, I understand that it is doubtless difficult for you to understand this as I do, but I am here to explain it and make you understand it. There is a great demand for land at the present time in this country, and understand that under the late decision of the Supreme Court of the United States, there are no large tracts of land on any reservation that will remain long before being opened to

settlement. If the Indians have surplus lands that they are not using, and if they refuse to entertain a reasonable proposition and fair compensation for them, Congress will open them regardless of their wishes. It is the desire of the Secretary of the Interior and of the Commissioner of Indian Affairs, and many of your friends in Congress, that you receive the best prices that your land will bring but you will have to receive payment for them from the proceeds of the sale of the lands, and it is for you to consider this matter very carefully. I am here to negotiate a treaty with you and if there are any questions that I can not answer, I will telegraph the Secretary for instructions. The Secretary and Commissioner have your welfare at heart and desire to do what is best for you and I am here to try to effect an agreement that will protect you fully. I wish to say that when negotiating the treaty with you two years ago, I had some discretionary power, but I am powerless to make any change in this. But if there is anything in the bill which you do not like, I can submit it to the Secretary and ask for instructions in the premises. The Government demands the opening of Gregory County and it will be opened. If we can enter into an agreement that will be satisfactory to yourselves and acceptable to Congress, it will be best for you. If you refuse to negotiate and turn your backs on this, Congress can open your lands just the same. I do not wish to be [14] understood that Congress will take your lands without compensating you for them, you will doubtless be allowed what was provided in your agreement. In order to meet your wishes, some concessions might be made to you. It is possible that Congress might be induced to make certain concessions. It would be useless for us to conclude an agreement that Congress would not look favorably upon, and I know that any agreement entered into with you here, and approved by the

Secretary and Commissioner would be more apt to be ratified, even though it favored you more than a bill prepared in Congress and passed by that body, and I therefore regard it for your best interests that we conclude an agreement along the lines desired by Congress.

Each of the four speakers here today stated that they were ready to call the agreement off and retain their lands as they existed two years ago. In so far as the status of your lands is concerned, there is no question about that, your land remains just as before the agreement, but that tract will not long remain so. If we fail to make an agreement, this coming session of Congress may enact laws that will open these lands, and I hope to make an agreement with you that will meet the wishes of Congress.

I wish you to look at this matter in a very serious light. I hope that you will take a proper view of it. I want you to tell me any objections which you have to the bill as it is presented to you. If there are any changes that I can bring about myself, I will cheerfully do so, and if there is anything that I am not privileged to act upon I will refer it to the Secretary for instructions. It is impossible for me to know what is in your minds unless you express your thoughts. If there are any objectionable features, anything in the provisions of the bill that you do not like, I want you to state them to me.

HOLLOW HORN BEAR:-

I have lots of complaints to make. I am an Indian and have little wisdom but I remember what we have lost in the years past. I [15] want to ask questions about Gen. Crook's treaty. He said that the first three years the allotted land will be \$1.25. He told us that there was three millions of dollars in the Treasury of the United States to the credit of the Indians. For the fourth and

fifth years it was seventy five cents per acre, and all the rest of the land, good or bad was fifty cents per acre. There were twelve sections in the agreement that you made with us. One of the first things you talked to us about was to pay us. I have not seen any of the money yet. Of course, we ought to be paid before this, now two years are past, and no money yet. Where is that money? I guess the Government got it. I think there are some words in the new bill that you read to us that are covered up. I am afraid that if I sign this new treaty that you will take it from us and not give us any pay only the school land money. Now the white people will not take this land in four years, they will sit and wait for it to be sold at auction and then they think they will get it cheaper. When Gen. Crook made that treaty, the white people didn't take the land for \$1.25 per acre; they waited until it got cheaper. I can look at the past and know by that, that we will not get the money for our land. The land left over will not sell, the people will not take 160 acres of rough country. When we sold our land for five and ten cents per acre, we did not know how much an acre was, but now we have learned more, and know and remember about all these things. We can see that the Great Father has made immense money out of our lands. And now you come here and tell us that an Indian had a lawsuit and he got beat. The Indians here are not citizens yet. We can't vote for the President. If Congress opens our land, we will feel like prisoners within our own country. I have taken my allotment of land, and the Government gave me a Trust Patent, why does he not give me a deed that will last always and not only 25 years? The Great Father is without mercy on us. When a man speaks English, everything is decided in his favor. You ought to have mercy on us, we want to be good people. You say that this land will be opened up without our consent. That is

not right, the land belongs to us, and you ought to go home and tell the [16] Great Father so. Our treaty was not complied with, and we have great cause for complaint. When you came here before, I was in New York; and when I came back and saw the treaty, I knew that it was good and I told my people to sign it. I fooled myself and made a mistake with my people. The modification of the treaty tears it to pieces, it is of no effect, and we will keep our land, and the Great Father can keep his money. I have nothing against you and the Agent, Congress is to blame. The Great Father gave us the land for twenty five years, now he undoes that and opens up the land.

PICKET PIN:-

I want to say a little word. I am one of the chiefs of these Indians. If you had kept the other agreement that you made with us two years ago, we would consider this new treaty, but now we are going to keep our land. You can go home and tell the Great Father that we will not give up our land like this.

INSPECTOR McLAUGHLIN:-

My friends, I wish to say to you that I would not and do not take second place to any man in the U.S. in my desire to benefit the Indians. I have a great many friends among the Indian tribes. That friendship has been gained by friendly dealings with the Indians, and by always making true statements with no misleading words. I could come before you and say words that would please you, that would sound sweet to your ears, but if they were not true, you would learn to despise me for them, therefore I make it a practice to tell Indians the truth on all occasions. It is much better for you to know the truth about these lands, and when I told you that your unallotted lands in Gregory County might be opened without your consent, and in saying so, I told you the truth; but I did not say that such will be done.

I fully believe from your talk here today, that you have not considered the question I put before you. The only question before you to consider is the identical tract of land that you negotiated for two years ago. Your reservation apart from that tract is not [17] involved and is not affected by the question under consideration. It is the unallotted lands in Gregory County only. I believe that we could come to an agreement, if we only discussed the matter we should discuss. I would suggest that you appoint a committee of say about eight or ten men and come here and talk with me, and you could then explain the matter to the people in full council, so that you would understand it as well as I do. I am not feeling well today and am afraid I have not done myself justice in explaining the matter, but I wish you to consider the proposition among yourselves and not return to your homes, until you have reached some conclusion. Everything I can do for you in the premises, I will cheerfully do. Any change that you may desire to have made to protect your interests, I will consider and any reasonable concessions that you may request, I will ask the Secretary for instructions, but any concessions made must be such as to meet the policy of Congress and we must bear that in mind. I wish you to council among yourselves tonight, and come to see me tomorrow at ten o'clock. Do you consent to my proposition to meet me tomorrow at 10 o'clock?

INDIANS:-

Yes.

Council adjourned at 6 P.M. July 29, 1903.

Council reconvened at one o'clock on Thursday, July 30, 1903, with Agent McChesney and about 165 Indians present.

INSPECTOR McLAUGHLIN:-

I am pleased to see so many of you here today. This is

a larger gathering than we have had at our councils before, and I hope that you have come to some conclusion at your councils last night among yourselves, and I am ready to hear what your decision may be. Just before adjournment last night, I suggested to you the advisability of appointing a committee of eight or ten men to act for the tribe. I did not say that you should do so, but simply suggested it to you. You can act as you please in the matter, either discuss the question in open council or appoint a committee to act for you.

[18] TWO STRIKE:-

My friend, I am going to tell you what I think about it. We come here today as we came two years ago. You told us that you will give us \$2.50 per acre for the land; you took our names and went home to the Great Father. We have been waiting for two years to see what the consequence of this treaty would be. It has amounted to nothing. Now we hear the news that the price of \$2.50 per acre is done away with. You have shoved the land back to us and we will take it again. We don't want to sell the land to some farmers. We want to sell the land to the Great Father, and no one else. We are poor Indians, we are starving to death at the present time. I know that you white people want the land, and it is worth \$5.00 per acre and now that the deal is off, we are glad to have our land back again. If we make a new treaty, we want \$5.00 per acre for it.

HE DOG:-

The men here gave me power to speak for them. They chose ten men to speak at this council this afternoon, and I was one of them. I speak for them as well as for myself. What you promised us the last time you were here was not accomplished. We don't want to sell the land now and the Great Father can not have the land again. We are glad to get it back again.

HIGH PIPE:-

I am chosen to speak for my people this afternoon. What I say is what they think. We made a good treaty with you two years ago, with a good heart and all the Indians were satisfied, but since the treaty was modified, the people don't like it and don't want to sell the land to white people. We have the land. We will keep it. We have decided this.

THIN ELK:-

I was selected as one of the speakers and I am going to talk. You took the treaty home with you two years ago. Now that treaty was not complied with, so we are going to keep our lands.

[19] WHITE HAWK:-

You asked us for our land two years ago. You offered us \$2.50 per acre for it. Do you remember that? It was not complied with and the whole thing has fallen through with. The Great Father can keep his money, we will keep our land as it is.

BULL NATION:-

I will talk again today as I did yesterday. Two years ago you promised us \$2.50 per acre for the land, you didn't give it to us, so this treaty is all off.

REUBEN QUICK BEAR:-

The Indians told me to speak for them. This land we consider belongs to us Indians and the Great Father wants the land back because he has sent you here again. You told us two years ago that you had to have three-fourths of the Indian's consent. We gave that consent, and you went home with the agreement and then Congress changed it and sent it back to us again and you are here to talk about it. Before, you promised that the Great Father would pay us, now you say that the land will be sold to white people by the Government. You say that they will pay fifty cents when they enter

the land and fifty cents for the next four years. We don't like this new way; we don't want to sell to white farmers, and we won't do it either.

ALLEN NIGHT PIPE:-

I never have spoken to a large number of people before, but they have chosen me as a speaker. The Agent will remember that I have asked him about the selling of our land and I have asked him why we did not get the money as agreed. This agreement of two years ago was signed by three-fourths of the Indians with a good heart. It was taken home to the Great Father. The Secretary and the Senate was pleased with it. You told us that the Senate was pleased and passed the bill. You said that some of the members of the House of Representatives were pleased with it, but when it came to the full House, you told us that it did not pass. That was wrong. You said that members of the House modified this bill. That was wrong [20] again, and our hearts feel bad towards those that were not pleased with the bill as it was signed by us, but as it was not, we will take it back again. We will not sell for less than \$2.50 per acre and that to be paid by the Great Father. The land is ours, and we will keep it.

GRAY EAGLE TAIL:-

The Indians pushed me forward as a speaker and I have come to the front as they told me to do. The people in the past, have had me talk to the Agent for them. We sold the land two years ago. We have asked the Agent why the land was not paid for. We want that money before we die. Many of us have died in the past two years, who have had no money from this land. Many of us will die before we receive any money from the land, if the Great Father does not pay us.

REUBEN QUICK BEAR:-

Hollow Horn Bear is to make a speech but we want to hear from you before Hollow Horn Bear makes his speech.

INSPECTOR McLAUGHLIN:-

As the sun is hot, I will speak to you with my hat on. I wish to say to you that in the past the Government has purchased lands from the Indians and paid them directly from the U.S. Treasury. That has been the practice from the first treaty with the Indians up to quite recently, but Congress has decided upon a new system of paying Indians for surplus lands that they may have to dispose of; by paying them only what may be realized from the sale of the land. The bill which I have presented to you and which I hope to conclude an agreement in conformance with, provides for the same price which was promised to you two years ago, but instead of the government paying directly from the U.S. Treasury, it collects the money from the sale of the land and turns it over to you which is one and the same thing, and whatever is realized from the sale of the land, will be turned over to you; every cent, every copper. Any agreement that we may enter into for the sale of this land in conformance with [21] the requirements of Congress, will provide for the amount which was stipulated that the Government was to pay by your agreement of two years ago, but understand me, the agreement will not provide for the payment of certain sums at certain times. We can not make any calculations as to what will be paid each year, but it must all be paid at the end of five years and six months from the date of entry; and this assures you practically the same as was provided for in your former agreement, which provided for five annual payments.

I fear that this matter is not fully understood by you. I would have been pleased to have had the former agreement ratified, because I know that it was good for you people and the Government also; but as that failed of ratification, I am here to enter into an agreement which is similar to that of two years ago, except as to the manner

of payment; which manner of payment makes it impossible to state definitely what amount can be paid to you each year. My friends, it is almost two years since we negotiated that agreement for your lands, and what benefit have you received from these lands during that time? You have not received one cent from these lands. Your relatives and people who are living there, will be protected in their allotments, and it is only the unallotted portion if the tract that we are negotiating for. I feel that when we understand it fully, we can come to an agreement, but the agreement must be along the lines as provided in the modified bill. Remember you receive every dollar that the land will bring and I feel quite sure that the money which you will receive under the new agreement will be as much, if not more, than what you would have received under the agreement of two years ago, for the reason that the land can not be sold for less than \$2.50 per acre and the bill provides that any one who fails to make any one of the payments as they become due, will forfeit the land and all that he has paid. This land reverts back to the Government and is sold again, so that whatever is paid on land thus forfeited is that much more for you Indians than you would have received under the old agreement. There will probably be entrymen who can not [22] make payment, and all this money will be in excess of the \$2.50 per acre that you will receive. You have said that you want to call this deal off. You are not using good judgment in coming to that decision. Congress wants the land opened; the people of the country want the land opened, and now it is for you to make the best bargain you can for the land. It is of no use to you now, you are deriving no revenue from it now. You will still have as large a reservation as Pine Ridge after this is cut off. White men going into that country will build houses and make improvements and the value

of your land will be enhanced. Rumors have reached me that there are some provisions of the bill that do not meet the wishes of you people, and as I told you yesterday, I want to know what your objections to the bill are, and if I can do nothing in meeting your wishes, I will telegraph to the Secretary for instructions. I don't want you to say that the Government can keep its money and you will keep the land. I am here to make an agreement with you along the lines of the bill, and the delegation from this state is very desirous to have that country opened to settlement. The members from your state are your friends, and it is your duty to listen and consider the matter.

You want to drop the words, "Let the government keep its money and we keep our lands." Look at the matter in the daylight and not on the dark side of it. You have the land, you don't need it, and the Government wants to open it and now the question is what sections of the bill do you want to have changed to meet your wishes?

HOLLOW HORN BEAR:-

These last few days have stirred up my heart all around. You are treating us like General Crook treated us. It pretty nearly kills me. The Great Father wanted us to touch the pen and then he said he would take the land, but he did not do it. We understand the bill. I understand the bill and I have told my people about it. Our council two years ago was very good, why don't you protect us with that? You ought to say to Congress that they must ratify the treaty. This is your business to do that. The land in Gregory County is the best land that we have. We want to get the worth of it.

[23] We know that it is valuable as well as the white man. The two sections of land that the Government agrees to pay cash for, that is all that we will get out of

the land. When are we going to get our pay for that? Some of the land will wait for years and not be taken by any one. They will not take the land even at \$1.25 per acre in Gregory County, they will wait to get it cheaper. If the land is sold at auction, we won't get anything from it. You say that if the white man who enters the land does not pay for it the Government will take the land back again, and it will keep it too. You said two years ago that we would be given \$30.00 per capita for five years and two head of cattle to each person, but you see that it all falls to pieces. This new bill provides that you will issue cattle in October. You might as well give the cattle to us in the winter time, they will all die, we will have no hay for them. Have you the power to telegraph to the Secretary and find out about this?

INSPECTOR McLAUGHLIN:-

Yes, I have such authority, but there is no necessity for me to do so as yet.

HOLLOW HORN BEAR:-

If we sign this modified bill you take it home to Congress and they do not see fit to ratify the bill, then the sale is all off again, and we will get no money. We are afraid that you will do like Gen. Crook did. You told us that Congress had power to open up our lands without our authority. Will you take oath to this?

INSPECTOR McLAUGHLIN:-

I Will. (Rises and holding up right hand repeats the following)

The Supreme Court of the United States, from which there is no appeal, has decided that Congress has the power to legislate for the opening of Indian reservations without consulting the Indians. That the Indian is the ward of the Government, and the guardian may do what is deemed best for the ward, therefore Congress has the right to enact such laws without obtaining the consent of the Indians.

[24] This decision was rendered in the case of Lone Wolf, a Kiowa Indian. All officials bow to the decision of the Supreme Court; the President, Cabinet officers and Congress. The Supreme Court is the court of the last appeal. This is the final end of all disputed questions. The title of Indians to their lands is simply occupancy; and when Congress is convinced that Indians have more land than they can properly use, it may open such lands to settlement.

It is to conserve and preserve the three-fourth majority rule in your affairs, that the Secretary, the Commissioner and the delegation from South Dakota are desirous of effecting an agreement with you; and I hope that rule will never be broken among the Sioux Indians, but Congress can break this rule if it sees fit to do so.

HOLLOW HORN BEAR:-

Was not the decision of the Lone Wolf case given partly because he was self supporting? Gen. Crook told us that this money was deposited in the Treasury of the United States to our credit. Where is that money now?

INSPECTOR McLAUGHLIN:-

It is still there, and it is drawing \$150,000 per year interest. \$75,000 in cash and \$75,000 for school purposes. Every year the Sioux receives per capita payments from that interest bearing fund.

HOLLOW HORN BEAR:-

I have always thought this land belonged to us, but now since this decision, I believe that our land will be taken away from us.

INSPECTOR McLAUGHLIN:-

No, you are protected in that.

HOLLOW HORN BEAR:-

Then do I understand that Congress is going to open up our land without the consent of three-fourths of our people here. Is this true?

INSPECTOR McLAUGHLIN:-

I have not said that Congress would do so, but that it had the power and might do so, but I am sent here to try to make an agreement [25] with you that three-fourths of you will sign, to preserve that rule.

HOLLOW HORN BEAR:-

You go home and tell the Great Father we don't want to sell any more land to him. Before they take our land I will go home and cut some hay, so I can have some for next winter, and we will now break council and go home. (Indians all started to leave the council)

INSPECTOR McLAUGHLIN:-

I wish to say one word more, I have too much interest in you people to allow you to leave so abruptly. You ought not to act so hurriedly and thoughtlessly. You are doing something that you will be sorry for, I am here as your friend, I am not here to take anything away from you without full value therefor, and it is not proper for you to leave so abruptly without first giving the matter due consideration. I am here in your interest as much as in the interest of the Government, and I don't want any of you to feel that I would take any advantage of you, for I would not. I am prepared to enter into an agreement with you that is as good as that one of two years ago, but you have failed up to the present time to make any suggestions to me as to what changes you would want in the bill. You should state what part does not meet your wishes, tell me what changes you want, and I will see what can be done about it. I would like to have a committee appointed to meet with me to discuss the matter understandingly.

HOLLOW HORN BEAR:-

I have just told you some things that we objected to. The bill provides for a payment at the time of entry of the lands and then jumps two years without any

payment. After four years they will sell at auction to the people 160 acres. No one will buy it that way. No one wants 160 acres of that rough land that will remain, which is only fit for grazing purposes.

INSPECTOR McLAUGHLIN:

Do you mean by that that you object to the land being sold in tracts of 160 acres?

[26] HOLLOW HORN BEAR:

Yes. They ought to let a man buy as much as he wants to of the rough land that will be left by the homesteaders. They ought to sell enough to one man to range his cattle on, and it would be worth more to the purchaser in that way and a better price would be gotten for us by selling the rough grazing lands in that way. A railroad has been built right up to our lands there since you were here two years ago, and all lands there have increased in price and we want at least as much for that land as was provided in our agreement of two years ago, which can not be realized from the provisions of the bill you have presented.

The land that would be taken as homesteads by farmers would have to be sold for more than \$2.50 per acre to make up for the rough grazing lands which would not bring the price that the farming lands would.

INSPECTOR McLAUGHLIN:-

As your friend, I wish you to consider this matter further among yourselves, and return here when you have given the matter more careful thought. Will you do so?

Many Indians:-

Yes, but we can not return short of a week. The Agent is to pay us for labor a week from tomorrow and the following day, and we will meet you in council again that day, but not before.

INSPECTOR McLAUGHLIN:

I dislike to delay so long, but to meet your wishes, I

will do so; and we therefore will meet here in council a week from tomorrow as you request. The Council is now adjourned until Friday August 7, 1903.

Council adjourned at 4:30 P.M.

[27] Council reconvened at four o'clock, Friday, August 7, 1903, with Agent McChesney and about 350 Indians in attendance.

My friends, I am more than pleased to see so many of you here today; many of you present not having attended our earlier councils. We adjourned a week ago yesterday with the understanding that we would meet in council again today, it being understood that many of you who had not attended our former councils would be here today to receive labor money due you. Since our last council, I have visited Sioux Falls and had a very pleasant interview with Senator Kittridge. I telegraphed to Congressman Burke from Sioux City to try and make an appointment with him but he was obliged to go to Chicago and therefore I was unable to meet him. I had the twenty-six pages of the minutes of our former councils, up to the time we adjourned last week, with me and Senator Kittridge read them and was very much interested in same. I explained to him that some modifications would be necessary in the bill before it would be acceptable to you people, and I wanted to ascertain his views in relation to the modifications that he thought proper to concede in order to satisfy your wishes in the matter. I have given this matter a great deal of thought during my absence and since I returned today, and have been considering some changes which I think will meet your wishes. I have an agreement outlined which requires some filling in, and since my return I have been thinking about it and shall complete it tonight and read it to you tomorrow and will then know if it meets your wishes. The changes which will be made in the bill

will be based upon the last few minutes talk we had in our last council when Hollow Horn Bear stated the provisions in the bill which were objectionable to him and I presented the matter to you. Hollow Horn Bear objected to the bill providing for a certain payment at the time of entry, then jumping two years without any payment. The bill provides that all land not sold at the expiration of four years shall be sold at auction in not to exceed 160 acre tracts to any one individual.

[28] Hollow Horn Bear concurred in the land being sold in tracts of 160 acres each, but as many of such to individual bidders as they were able to pay for. That a man should be allowed to buy as much of the land as he chooses, provided his bid was the highest and he had the money to pay for the land.

I know that since our agreement of two years ago, a railroad has been built near your land, as was stated by some of your speakers, and that this will be of great benefit to those who will buy the land as well as a benefit to the Indians living in the Ponca Creek District. Your speakers also stated that the good land, the agricultural tracts, will all be taken at \$2.50 per acre and the poor land fit only for grazing purposes will be left after all the good land is filed upon, and this poor land will not bring \$2.50 per acre, therefore you demand a higher price than \$2.50 per acre for the agricultural land, because you want it to average you as much at least as was provided for in the former agreement, \$2.50 per acre throughout.

It would be useless for us to conclude an agreement that would not be ratified by Congress, and that the South Dakota delegation would not approve of; therefore I consulted with Senator Kittridge regarding the matter and obtained his promise of support to a modified bill that I think will meet your wishes.

Some of your young men came to see me the evening before my departure for Sioux Falls and talked of several matters, one of which was their desire for a provision in the agreement whereby the self-supporting men of the tribe might sever their tribal relations and secure the tribal benefits due them, and if it is your desire I will include such a provision in any agreement we may conclude.

As I told you in our former councils, that county will, without doubt, be opened at the coming session of Congress and I am willing and ready to enter into an agreement that will cause you to realize as much out of those lands as you would have realized if the former agreement had been ratified.

[29] There are a great many persons here today who have not been present at any of our former councils. Your relatives who have attended these councils have no doubt explained to you the provisions of the bill, and I deem it only necessary to say to you that these negotiations embrace the identical tract of land that you ceded by your agreement of two years ago, the same tract, nothing additional. The bill provides the same price per acre as provided by the former agreement, that is the land can not be sold for less than \$2.50 per acre, but I can not state definitely what amount you will receive annually. The land is sold to homesteaders at \$2.50 per acre, every cent of which the Government will turn over to you. The Government acts as trustee and all that is realized from the sale of the land each year, until fully paid for, will be paid to you annually.

I have just consulted with your agent as to the most suitable hour to have our meeting tomorrow and have concluded upon two o'clock as the hour to assemble. I will then have the agreement, as I have it in my mind today, written out, and ready for your signatures, and I

believe that we can reach an agreement which will meet your wishes. There is only one question between us at the present time, the price of the land. You insist on receiving a higher price for your agricultural land than \$2.50 per acre, for the reason, as you state, that the poorer lands, the grazing tracts, will be left over, and when sold at auction will not bring as much as the agricultural land.

The other matters that you have contended for in our councils, I believe that I can meet to your entire satisfaction. I will be very careful to see that the amount provided for in this agreement in the aggregate will fully equal the amount you would have received had the former agreement been ratified. This is all that is necessary for me to say to you. I will have the agreement ready tomorrow and will read and explain it to you section by section, and I hope that all of you here assembled today, will remain until tomorrow, for this is a matter that is of great interest to you. If any of you not at our former councils wish to ask any questions, I am here to explain.

[30] HOLLOW HORN BEAR:-

I have a few words to say. Don't cut us to pieces, we came here to have a talk. You come here to meet the different chiefs more than the other people. You talk with the chiefs, and they talk and advise their people. I thought when we come here today that things would be all fixed up for us, as we told you before of the things we don't like in the bill. We thought that you would be ready to tell us what you could do to help us.

You said that some of the young men that don't draw rations came to you the other day and wanted to get what was due them from the tribe and then leave us. We don't like that. The Great Father is trying to civilize the people. We got up a petition and sent to the Great Father in regard to this matter, and if you put this in the

agreement, we consider that it would be setting this petition aside. You can see all these people here, we don't get rations. If you are going to make a law, it concerns us all. In the past ten days we got some rations, we got seven and a half pounds of beef for ten days. I wonder what is going to become of us in the future. We are anxious to hear what you have prepared to tell us. You ought to tell us now. I asked you to tell the Great Father that we wanted him to buy our land himself, and that is what we want. We don't want to sell our land to white people and have them wait five years to pay us \$2.50 per acre. You have told us that there will be some cattle issued to us in October. We want them issued to us in the spring instead of October. I am not saying this for myself, I am saying it for all my people. We came here to meet you today and hear what you had to say to us and then go to our camps and talk about it. We want to hear the provisions of the new treaty that will suit us, so we can go and talk about it with a good heart like when we are courting women. We know that you are our friend, that you are a friend of the Indians, that you have a family of Indian blood, and when you work for us, you work for them also. We are anxious to hear from the Secretary and the Commissioner, you have told them what we want.

[31] Yesterday I had a long talk with my people. I told them to honor you and the Agent as much as possible and consider all that you say to them.

INSPECTOR McLAUGHLIN:-

My friends, you understood me to say that cattle would be issued to you in October, it is a misunderstanding, for I never made such statement. The bill provides that you should receive the same number of cattle that the former agreement did, that is, that \$250,000 should be expended in the purchase of cattle, this would give about two heads of cattle to each person.

The bill does not provide the time of year that you should receive the cattle, that is discretionary with the Secretary, Commissioner and Agent, and none would be delivered later than July; I think May and June would be the months that you probably would receive the cattle.

I said that one half of the money received from the sale of the lands the first year would be paid you in cattle and the other half in cash. The bill provides that there shall be an accounting and settlement in the month of October of each year, that is, there shall be an annual settlement with you for all money received from the sale of the lands in the month of October of each year until the lands are fully paid for. I said nothing about cattle being delivered in the month of October. For instance, in case we should enter into an agreement and Congress should ratify it, the land would probably not be opened until July next, and the money would be paid immediately after the land was opened and entry of same made. The first payment would be made as soon as practicable after it was paid by the entrymen. In the month of October you would receive one half of all the money paid in, but the other half of the money would be invested in cattle, which you would not receive until the following spring.

My friend, Hollow Horn Bear, said that he thought that I would return with the paper all written out. It is a very difficult thing to write out an agreement of so great importance, and I was not able [32] to do so, while on the train or on the stage, but waited until I should return here, and have a quiet place. I will explain what the agreement will be that I propose to read to you tomorrow. It must be along the lines provided in the bill as far as the payment is concerned, but the amount of money that you will receive annually, can not be stated in the agreement. For all the land taken by the settlers

under the homestead act, I will provide that you receive at least \$2.75 per acre for it, and that the homesteaders shall pay at the time of entry seventy-five cents per acre and then forty cents each year, the following five years; which means that you will receive \$2.75 per acre for all the good land, the agricultural land. The forty cents per acre annually, that you will receive for five years will amount to \$2.00 and the seventy-five cents that you will receive at the time of entry will give you \$2.75 per acre for your farming lands. As I stated before, if any man makes entry on a piece of land and fails to make a single one of the payments when it becomes due, the land is taken away from him and all that he has paid is forfeited. The amount that such entrymen may have paid goes to you, and you will receive this money in excess of the \$2.75 per acre that will be provided for in the agreement which I will submit to you tomorrow. This land thus forfeited, by the entryman failing to make payments, goes back to be again disposed of by the Government who will sell it over again at the same price.

I feel quite confident that all the land that is suitable for agricultural purposes will be taken within ninety days after the tract is declared open, but in that section of the country there is a great deal of rough land that can never be cultivated profitably, therefore to protect you people, it is necessary for you to obtain the highest price possible for the agricultural lands. The question raised by you in our last council that any man should be allowed to buy as much of the rough grazing land as he is able to pay for, and not be limited to 160 acres appears to me quite reasonable, and it is no doubt true that if a man were allowed to purchase say eight or [33] ten quarter sections, it would find a quicker market and bring you a higher price than if purchasers were limited to tracts of 160 acres only. I believe that every foot of land would be

sold if disposed of in this manner, and you would realize all that the land would bring, while if it were sold in small tracts and only 160 acres to an individual, there might be some that would not sell at all. This was the particular point that I talked with Senator Kittridge about, and he said that he would do his best to have Congress ratify that part of the agreement, for he thought it only fair to you people. Remember that Sections 16 and 36 in each township, aggregating 28,000 acres, is paid for by the Government at \$2.50 per acre direct from the U.S. Treasury; that money is available immediately after the land is opened. Also three tracts of land, one for a Catholic Mission, something less than 80 acres, and two tracts for Congregational Missions, of 40 and 80 acres respectively, or little less than 200 acres in all, is also paid for directly from the U.S. Treasury: The 28,000 acres of land for school purposes, that is, Sections 16 and 36 in each township, will amount to a little over \$71,000 which becomes immediately available after the opening of the land. All the rest of the land not taken by homestead settlers at the expiration of four years, will be sold at public auction. I will prepare the new agreement that I will submit to you tomorrow in such a way that it will meet all objections to the bill, as you have expressed yourselves. The only question is the price of the land. In order to be understood, remember that you do not receive cattle in October. You will receive cattle in the spring; in the month of October there will be a settlement and the money on hand then disbursed and paid to you.

I think I have made myself understood and you should certainly be able now to talk this over intelligently, and come back tomorrow at two o'clock, and I will have the agreement prepared. After I read the agreement and explain it, should there be any particular point that you object to, it might be possible to change it to meet your

wishes. This agreement must be prepared to conform to the [34] general policy of the Government, at the same time, I will prepare it so that no words will have a double meaning, and nothing covered up. That cattle would be delivered in the month of October, is not intended and I don't want that impression to get out among you people. This is all I have to say, and we will adjourn to meet in council tomorrow afternoon at two o'clock. Council adjourned at 5 o'clock, P.M. August 7th.

(Hollow Horn Bear speaks to Indian assemblage, not interpreted)

Council reconvened at 2.30 P.M. Saturday afternoon, August 8th, 1903, with about 350 Indians in attendance.

INSPECTOR McLAUGHLIN:-

Thomas Flood interpreting,

My friends, according to my promise made to you last evening, I am prepared to read the agreement which I have written out to submit to you. I will hand one copy of the agreement to your Agent and one to the interpreter. In case we sign an agreement, this one in my hand is the one that I will forward to the Secretary. I will read it section by section so that it can be fully interpreted, and that you may be able to understand it fully. The first article is exactly the same as Article I in the agreement of two years ago, but I will read it.

(Reads prepared agreement to the Indians assembled, which is interpreted as read).

My friends, I have prepared this agreement with a great deal of care. Your interests are well guarded, not a word in it with a double meaning. I have made the modifications in the different clauses of the bill which you did not like, and this agreement has been submitted by me to Senator Kittridge and he said that he would give it his hearty support. I allowed you Twenty-five cents more per acre than the former agreement provided for, for the

reason that there is a great deal of rough broken country, only fit for grazing purposes, and will not sell for so much as the agricultural land; therefore I have increased the price of your farming land. Now remember I have not made any promises as to the different amounts of money that you [35] will receive annually, but I have made what I consider a conservative estimate. The school sections in each township, that is, sections sixteen and thirty-six amount to 28,508 $\frac{68}{100}$ acres, which will be bought by the Government and paid for from the Treasury of the United States, and will amount to \$71,271.70. The Mission tracts embrace 198 $\frac{57}{100}$ acres which at \$2.50 per acre amount to \$496.67, making a total of \$71,768.37 which you will receive direct from the U.S. Treasury. This leaves 386,473 $\frac{89}{100}$ acres to be thrown open to settlement. I have estimated that there will be 300,000 acres which will amount to \$825,000.00: leaving 86,473 $\frac{89}{100}$ acres to be sold for grazing purposes, at auction, and I have estimated that this will bring \$2.00 per acre, which will amount to \$172,947.78. According to my estimate the total amount of money that you will receive from the sale of the lands thrown open to settlement will be \$1,069,716.15.

The terms of this agreement which I have submitted to you this afternoon, provides that the first payment to be made at the time of entry shall be seventy-five cents per acre and the 300,000 acres as estimated, which the first payment of seventy-five cents per acre will be made upon, will amount to \$225,000.00, and the amount paid for the school and mission lands direct from the U.S. Treasury would amount to \$71,768.37, making a total of \$296,768.37 that would be available for the first payment, one half of which will be paid in case, and one half in cattle. I believe this to be a conservative estimate and that this amount is likely to be increased rather than

diminished. If these figures are realized the first cash payment would be \$148,384.18, with cattle for a similar amount.

At the end of the first year you would receive forty cents per acre on the 300,000 acres which would amount to \$120,000.00, at the end of the second year you would receive forty cents per acre on the 300,000 acres which would amount to \$120,000.00. At the end of the third year, you would receive another payment of forty cents per acre, which would amount to \$120,000.00 and at the end of the fourth year [36] you would receive forty cents per acre on the 300,000 acres, which would amount to \$120,000.00, and also at this time all the land not having been entered under the homestead law will be disposed of to the highest bidders for cash, and I have estimated that it would bring \$2.00 per acre and that there would be 86,473 $\frac{89}{100}$ acres left unsold, which if sold at the price named would amount to \$172,947.78, which added to the \$120,000.00 would make a payment for you at the end of the fourth year amounting to \$292,947.78, and the last payment to be made within six months after the expiration of the fifth year amounting to \$120,000.00, or the last two payments might be equalized, and give you an equal amount each of the last two payments.

The agreement provides that you shall receive \$250,000.00 in cattle or one half of the receipts until the \$250,000.00 has been expended in cattle, therefore as estimated by me, you would receive at the first payment \$148,384.00 worth of cattle, and a similar amount in cash. At the second payment, which would be at the end of one year from date of entry, you would receive \$60,000.00 worth of cattle, and at the end of the second year you would receive \$41,616.00 worth of cattle, which would expend the \$250,000.00 provided for

cattle, and after the third payment at the end of the second year, all the payments would be in cash.

I consider my estimate very conservative, and I believe that the amount that will be realized from the lands will be even greater than I have stated, but I do not wish to estimate too high and mislead you in any way or make it sound flowery. On this estimate I have based my calculations to figure out what amount of money you would receive when the first payment was made on the land. You are to receive seventy-five cents per acre for the lands taken under the homestead law, which as estimated would amount to \$225,000.00, and the school and mission tracts paid for directly from the U.S. Treasury would amount to \$71,768.37, this latter would be paid at the time the lands were opened, and this would make \$296,768.37 available for the first payment, one half of that to be expended in the purchase [37] of cattle and the other half to be paid in cash. As estimated by me the six payments added together would make a total of \$1,069,716.15 realized from the sale of the land, or about \$30,000.00 more than you would have realized from the agreement of two years ago.

My friends, as I told you before, there has been very little discretionary power allowed me in these negotiations. I was detailed by the Secretary for this work, and instructions were prepared for me in the Indian Office, and I was directed to negotiate an agreement along the lines of the bill as explained to you in our councils. There were some portions of that bill which you were not satisfied with, and I made a trip to Sioux Falls to confer with the delegation from this state, and see if they would consent to have certain modifications made which you thought you were entitled to. I have made all concessions possible in the modified bill read to you, and I would not be justified in adding another word without instruction

from my superiors, and as stated to you in several of our councils, it would be useless for us to conclude an agreement, that the Secretary and Commissioner would not approve of and which would not be ratified by Congress. I have prepared the agreement very carefully, and your every interest is protected in the wording of each section. This agreement is very different from the bill I presented to you. Every provision is much more clearly worded and your interests better guarded, but the land is sold and paid for as provided in that bill, which is a new policy. The agreement which I submit for your consideration is similar in every respect to that of two years ago, except you have to wait for the sale of the land to receive your money, and in addition to the \$2.50 per acre, provided in your agreement of two years ago, twenty-five cents per acre is added for the agricultural lands. I have endeavored to explain the different sections of the agreement very clearly, and I am sure you all understand it. If any of you wish to ask any questions I am prepared to answer them.

HOLLOW HORN BEAR:-

There are several questions I want to ask. In the first [38] place I wish to say that you and the Agent are our friends, and we talk to you with a good heart. In Article VI there is something I would like to ask you about. You say that when the white men come on the land, the Great Father has nothing to do with the payment of that land.

INSPECTOR McLAUGHLIN:-

He has all to do with the land. He is the trustee for the Indians and until the last cent is paid he has possession of that land, and until he issues patents to the settlers, the land is in his possession.

HOLLOW HORN BEAR:-

Suppose the people do not take that land what will become of it?

INSPECTOR McLAUGHLIN:-

That is not possible. The land will be taken within thirty days, that is, as fast as the Land Office can take care of it. You, Hollow Horn Bear, have doubtless heard that when the land was about to be opened two years ago, there were thousands of people in close proximity, ready to go on the land, and there will be the same rush again.

HOLLOW HORN BEAR:-

If that was the case, the Great Father should have bought it from us.

INSPECTOR McLAUGHLIN:-

I have explained so many times that it is the policy of the Government to act as trustee in future for such lands and sell them for the Indians, but not to pay for them out of the U.S. Treasury; and only from the proceeds of the sale of the lands.

HOLLOW HORN BEAR:-

We are Indians yet, and we remember the laws that have been made for us. The Great Father has made a law that there must be three-fourths of the people consenting before any action shall be taken by Congress. If they will consider that law, then should not open that Gregory County without our consent. If they do, I shall [39] feel like a prisoner in my own country. Now, my friend, you have your doubts about this, you can not get up here and say before all these people, that we will derive as much money from the sale of these lands under the present agreement, as we would have received under the former agreement. You can not say that we will receive as much at the end of one year or two or three years.

INSPECTOR McLAUGHLIN:-

No, I can not, but I can say that I believe in the end you would receive at least as much, that is, at the end of five years.

HOLLOW HORN BEAR:

The Great father stands good for the school sections, that much money we would get out of the lands, but that is all the money I see in sight. The balance of the money is not in sight. When the Great Father agreed to buy the land the other time, he took it all and was to pay for it, and I said that that was a good agreement. This money for our land makes me think of the meat that we get these days. We get meat to last us ten days, I try to make it last that long, but it will only last me five days. I can see that the Great Father is going to pay for the school sections, but the balance I can not see at all. If the Great Father had sent you this time with as good an agreement as before, we would be very glad to hear it. I don't like this agreement, and I don't believe you do either. As I said before if the Great Father don't want to pay for the land, let him keep his money, and we will keep our land. There is another thing. You say in this agreement that the white men are put in with the Indians, just the same. I don't like that. When you come here with a treaty and want to get it signed by three-fourths of the Indians, you tell us that the mixed-bloods are just the same, that they are Indians, and you have them sign their names as Indians, and then when these mixed-bloods want to start a store or a meat shop, the Agent tells them that they will have to get a license. You used these mixed-bloods as a tool to get signers for your treaty, and when you are gone they are no better off than before.

[40] The reason that I speak this way to you is not because I have anything against you, but the people here are poor, and the Great Father ought to have mercy on us and try to help us. The Great Father tells us that he wants us to become like white men; that he wants us to become citizens, and when some of these young men want to become citizens and get their rights, they tell the

Agent so, he writes a letter and sends to the Commissioner and that is the end of it. Now you have attached this to this agreement, but Congress will throw that part away.

INSPECTOR McLAUGHLIN:-

They can't do that. It must be accepted as a whole or rejected as a whole.

HOLLOW HORN BEAR:-

I will use some words that you said to us before. These people accepted the last agreement, you took it to Washington; it pleased the Commissioner and Secretary and the Senate and part of the House but the full house threw the agreement away. They took the good words away and put in what they wanted. When you first came to tell us of this agreement, the Great Father caused you to make a mistake.

INSPECTOR McLAUGHLIN:-

I made no mistake at that time. But since then the Government has adopted a new policy in paying for Indian lands. I am pleased to know what is in your minds.

HOLLOW HORN BEAR:-

I think that is all that I care to say in regard to this. (Two Strike speaks, not interpreted. Red Hill speaks, not interpreted).

GHOST BEAR:-

Two years ago, you came here to make a treaty. I spoke some words to you at that time. I told you all that you said I would keep in my mind. Now I have kept those words until you have come again.

[42] by the people of this Agency, and I would not knowingly commit a single act that would lessen the friendship. It is for you to decide whether you will ratify the agreement by signing your names thereto or not.

WHITE WASH:-

I was not here when you came two years ago to make that treaty. When I came back I heard that you had made an agreement with the young men and they had signed, and I have always been thinking about it for two years now. If the Great Father had gone ahead and carried out that old agreement, it would have been all right, but we don't care to have anything to do with this new bill. We got nothing out of that other treaty, and many of the Indians have died waiting for their money. I think many of us will die before we get any money out of this land. I want you to go home with this new bill and tell the Great Father that it is not right. You ought to go home and get it fixed.

LITTLE THUNDER:-

My friend, I have some words to say to you. You know that in the past, we have been throwing our lands away for nothing. We had some land that we thought would be of some benefit to our people, the men, women and children. Our young men have children and they are coming all the time, where are they going to get land if the white people take it all? There are three things that I don't like in this bill.

HIGH PIPE:-

My friend, I have this to say. This poor old man, his name is Two Strike. He wants me to speak for him. This man has children and grand children. He wants us to consider this matter well for his people and children. There is no surplus land. He wants his children and his grand children to become owners of this land, and does not want to sell it. The Great Father in his great council

has torn our agreement all up. Two Strike wants his children to have \$5.00 per acre for this land. These are the words that Two Strike [43] wants to tell you, and that he believes in the three-fourth rule.

QUICK BEAR:-

I am an old man and have not much to say to you. I came here today to see you, and I think it is my duty to say these words to you. You came here before and you wanted our lands at \$2.50 per acre. At that time we wanted to sell the land to the Great Father, and if our agreement did not suit the Great Father, you should have returned sooner to tell us. We waited two years. Now we know that the land is valuable, and we want \$5.00 per acre for it. Two years ago, the Great Father could buy that land for \$2.50 but now we want \$5.00 for the land or we want nothing at all. This is all that I have to say about it.

BIG TURKEY:-

I have not much to say. The agreement that you made two years ago, that agreement did not stand, and I think that you did not try to support that agreement as you should. There have been times when we have been fooled, and I don't want to touch the pen again.

YELLOW HAIR:-

I am not your friend, you are my uncle. I was raised by a white man. I am afraid of this new treaty. It is my opinion that if we did sign it, you would back out again. You did not carry out your agreement promptly. Then another thing, there are many children being born, and where will they get their land? We will soon be crowded close together, and will be stamping on each other. These children ought to have land before we give land to white people. If you had carried out the former treaty, we would have been rich at the present time. I know that you are a good man, and you have been long among us

people. I want you to go back and talk it over with the Great Father and then come back again to see us if you wish to.

HE DOG:-

You remember that you were here before. Do you remember what you said to us? When you were here before, I told you that I wanted you to come back again with a good heart. All the people here today [44] are considering the matter and they told me to do what was best for them. I am ashamed to say that I touched the pen before, and was fooled. I won't sign your paper this time, and be fooled again.

INSPECTOR McLAUGHLIN:-

My friend, He Dog, has reminded me of something I wanted to speak of. He and many others will remember that when I was here two years ago, there was opposition to the agreement which I submitted at that time; more opposition to that agreement than there has been to this one. You will remember that there were five or six hundred of you here and that you broke up the council and all started off evidently intending not to listen to me further; but I called you back, and arranged with some of your leaders to have our next meeting in the school room. The reason that I did so, was because I knew that the agreement was for your best interests. It allowed you a good price for your land, and was liberal in every provision. Very few of you regarded it favorably when I first began talking with you about it, but now nearly every one of you who have spoken in council have said that it was a good agreement. I had 1,031 signatures to that agreement. I have explained to you in our former councils why that agreement was not ratified, and that these negotiations are for the same tract of land: I feel quite confident that the agreement which I have prepared will cause you to realize \$30,000.00 more than you

would have realized from the first agreement; but the manner of payment is different, and it is difficult for you to understand. I can not promise you that you will receive a certain amount of money each year at a certain time, as was provided in the former agreement, but I am confident that in the aggregate, at the expiration of five years, which was the limit of the other agreement, you will have realized more out of your land than you would have realized from the former agreement. I am not here to force you to accept this agreement. Your interests are well guarded, and it is for you to say whether or not you will accept it.

As far as I am individually concerned, it is all the same to me whether you accept this agreement or not. My salary goes on just [45] the same, and therefore I hope that you will decide upon what is best for yourselves and act accordingly. I have said that I do not want to hurry you. This is now the sixteenth day since the opening of our first council, and I feel that I would not be justified in remaining longer, holding councils and coming to no conclusion. If you are ready to accept this agreement, it is ready to be signed. If you are not ready and willing to sign the agreement, it is useless for me to remain longer. I will report the result of the council to the Secretary. The Secretary might conclude to send the papers back and might not, but remember I have told you before, I feel confident that the tract of land will be opened at the coming Session of Congress and I hope that it will be opened with your consent.

HOLLOW HORN BEAR:-

You have nothing more to say on your part, you have said what you have to say. I think we ought to have one more council, and I will get my people together tomorrow, and then we will decide whether we will accept it or not. I have been looking at this book in my hand, and

find that when we talked of selling our land before, some of them wanted \$5.00, \$6.00, \$10.00 and \$15.00 per acre. There were 1031 people that touched the pen then and therefore I want my people to get together tomorrow, and we will come to some conclusion and then come and tell you what we have decided. I think it would be all right for us to hold a council on Sunday and talk about it in a quiet way, and we will not dance.

INSPECTOR McLAUGHLIN:-

You can consult among yourselves tomorrow, and then let me know what your decision is on Monday. What time can you meet?

HOLLOW HORN BEAR:-

Monday morning is Issue day, but we could meet at two o'clock on Monday afternoon, August 10th.

PULLS THE ARROW:-

I object to this agreement. We want \$5.00 for our land, or we won't have anything. I represent the votes of 55 men in Cut Meat District. We will not stay to sign this agreement. We are going home [46] now, we will not wait for Monday.

IRON WING:-

I am going home. I want \$5.00 per acre or I want nothing.

Council adjourned at 5.50 P.M. Saturday afternoon, August 8th.

Council reconvened at two o'clock, August 10, 1903, with Agent McChesney and about 130 Indians in attendance.

TWO STRIKE:-

I don't want these people to sign today. I want you to go home and make a report to the Great Father that we want \$5.00 per acre, and then return again to us, and we will meet again to talk about it. We are poor and hard up and need all the money we can get out of the land.

WHITE WASH:-

My friend, today I say a few words to you again. This old man that you see before you is nervous. If I had kept account of the times I have been fooled by white people, it would stack up as high as the sky. I have been here a good while and know that the land is valuable, therefore whatever you have brought to us to consider about our land, I have taken an interest in. I don't want anything to do with the paper you have brought with you this time. I won't sign it. It don't suit me. You go back to the Great Father with what you have brought.

INSPECTOR McLAUGHLIN:-

My friends, we have met here today at the hour appointed for us to meet when we adjourned last Saturday. That adjournment was at your request to give you time to consider the agreement which I explained to you last Saturday. There was a large gathering here last Saturday, nearly four hundred people, and I am sorry to see so few of you present today. I see many of you here that I believe are opposed to the agreement, and many of those favorable to the agreement have returned to their homes. I believe that many of those in favor lacked the courage to come here today, but, my friends, those who are friendly disposed towards the agreement recognize what is best for [47] you people. I have taken all pains to explain this matter to you, in a way you can not fail to understand, and I am quite confident that you do understand it, and I regard it unnecessary to discuss the matter longer for the reason that those of you who have made up your minds not to sign would not be changed by anything that I might say and my powers of reasoning along these lines is about exhausted.

I am not going to force you to sign, but simply invite you to do so. I have signed the paper, it is here for your signatures, if you desire to do so, and as I said in the

beginning, whether I secure the necessary number of signatures or not, we part as friends just the same as formerly. The agreement has been carefully prepared and protects your interests fully, and it is now ready for any one who assents, to attach his signature. One word more and I am done. Any one desiring to sign this paper, must be allowed to do so without coercion or intimidation on the part of those opposed to the agreement. That is all.

REUBEN QUICK BEAR:-

I would like to tell you something about the council we had yesterday. You say that you have explained this matter to these people, and we took the matter under consideration yesterday. That was what the council was about. At that council there were representatives from different Issue Stations and different camps. At that council I was president and after taking the paper that you had read into consideration, I asked the council to vote on it. Six of the men there voted for the agreement. All the other representatives from different camps voted against it. The people have gone to their homes leaving their representatives to vote against the treaty. The reason that these people returned to their homes was because of work. It is the time when there is much work to be done, and they went home knowing that their wishes would be reported to you here today. My friend, we wish you to go home with your paper and we will go to our homes as the owners of our lands.

[48] HOLLOW HORN BEAR:-

I would like to ask you something. You come here with the law and you tell us that you have little authority, discretionary powers. Now you tell us that you have added twenty-five cents per acre to the price of the land. Have you the necessary authority to promise us that?

INSPECTOR McLAUGHLIN:-

I have the promise of Senator Kittridge and Congressman Burke to support me. Their word is as good as if it were written on paper.

HOLLOW HORN BEAR:-

Do these men work in the Congress and the Senate both?

INSPECTOR McLAUGHLIN:-

One in Congress and one in the Senate.

HOLLOW HORN BEAR:-

Do you think that this agreement will ever be ratified?

INSPECTOR McLAUGHLIN:-

They both assured me that they would do all they could, and I believe that the agreement will be ratified.

HOLLOW HORN BEAR:-

Then I will put that down in my book. (Writes in book). Another question that I want to ask. The mixed bloods from '68 to treaty of 1889, are they recognized as full blood Indians?

INSPECTOR McLAUGHLIN:-

They have been recognized as Indians, having all the rights of Indians.

HOLLOW HORN BEAR:-

Do you think and will you stand by what you have said in regard to the self supporting Indians becoming citizens, that is, will you say that this agreement will give the self supporting men their rights, and make them citizens?

INSPECTOR McLAUGHLIN:-

I said that if part of the agreement is rejected, the whole agreement stands rejected. No change can be made in the bill without coming back to you for your concurrence. This agreement will be [49] ratified or rejected as a whole.

HOLLOW HORN BEAR:-

My frield, I want to tell you something else. If they tear this bill to pieces again without asking me, I am going to take a knife and kill myself. I consider that you have given your word on this matter, that you have given your word as a man and if you stand up here and do not speak the truth to me today, I am going to kill myself. The Great Father takes the law in his hands many times and throws me over. We are not using that land, and you are trying to get it from us.

INSPECTOR McLAUGHLIN:-

Yes, but we are offering you a good price for the land. I am here to negotiate for the lands in Gregory County, nothing more.

HOLLOW HORN BEAR:-

All the Indians here want to remember what you have just said.

INSPECTOR McLAUGHLIN:-

I am not fearful of that, for I always tell the truth and a man fortified with the truth is always strong.

HOLLOW HORN BEAR:-

The Great Father is going to buy some of the land himself. Will every cent that he pays for the land come to us at the time of the first payment?

INSPECTOR McLAUGHLIN:-

Yes, every cent of the money paid for the school and mission tracts.

HOLLOW HORN BEAR:

About how much would that be for each person?

INSPECTOR McLAUGHLIN:-

It would be about \$14.00 per capita for the money derived from the sale of the school and mission tracts. And the money derived from the first payment as I have estimated would amount to about [50] \$29.00 per head.

HOLLOW HORN BEAR:-

If you take this home and it is not ratified, will you be ashamed to come back here again with another paper and talk to us?

INSPECTOR McLAUGHLIN:-

No, I would not as it would not be my fault, but at the same time, I believe that it will not come back for your concurrence in any changes, for the reason that the agreement conforms to the policy of Congress. The objections to the former agreement was not on account of price, but to the manner of payment.

WHITE HAWK:-

My friend, I want to say that this paper does not suit me, and I won't sign it.

GOOD BIRD:-

My friend, you told us that if this paper does not suit us, we did not need to touch the pen. It does not suit me, and I won't touch the pen.

INSPECTOR McLAUGHLIN:-

I don't wish to consume any more time with speeches. The paper is ready for you to sign, and you must determine, each for himself, but I would like to have you sign, because it is for your best interest.

(Hollow Horn Bear then came forward and signed, and was followed by others, until ninety of those present had signed the agreement, whereupon the council was adjourned sine die.)

I hereby certify that the foregoing is a true and correct transcript of the proceedings of Councils held by James McLaughlin, United States Indian Inspector, with the Indians of the Rosebud Reservation, South Dakota, from July 24th to August 10th inclusive, 1903.

[Rear Coverleaf]

Rosebud Agency, S.D.

August 14, 1903.

Assistant Clerk.

Minutes of councils held by James McLaughlin, U.S. Indian Inspector, with the Indians of Rosebud Agency, S.D. from July 24th to August 10th, 1903., in reference to the cession of their unallotted lands in Gregory County, S.D.

[#13A]

[Excerpt from Report of the Commissioner of Indian Affairs, 1901. Letter dated August 15, 1901 from the Superintendent to the CIA]

[371] The Indians living on the Rosebud Reserve belong mainly to the Brulé Sioux band, and the annual census taken at the end of June last gives the following results:

Males over 18 years of age	1,368
Females over 14 years of age	1,628
Males under 18 years of age	1,010
Females under 14 years of age	911
Total Indians on reserve	4,917
Children between 6 and 16 years of age	1,238

The census was taken in a careful manner by a large number of persons on the same day. The reserve is divided into seven districts, with a farmer in each district and assistants in charge of each, and these districts are further subdivided into several school districts, and in taking the census not only the farmers, but the teachers and police and all other employees are made use of. A census thus taken in one day by persons who know the Indians, if carefully done, should be quite accurate, and the results given above are believed to be so.

* * *

Twenty-one Government day and one Government boarding and two mission boarding schools have been in successful operation during the ten months of the year. The reports of the superintendent of the Rosebud

boarding school and of the day school inspector are transmitted herewith and furnish the detailed information regarding the schools.

* * *

[372] Special Allotting Agent William A. Winder and his assistants are still engaged in the work of allotting the Rosebud Sioux. The number of allotments made to June 30, 1900, was 4,064 and from that time to June 30, 1901, 444 more were made, making a total of 4,508.

[#14]

(Memorial of South Dakota Legislature petitioning Congress to ratify the 1901 agreement with the Rosebud Sioux)

[36 Cong. Rec. 148 (1902-1903)]

Rosebud Reservation:

* * *

Memorial of legislature of South Dakota favoring ratification of agreement with Indians on 1559, 1626.

[36 Cong. Rec. 1559 (1903)]

Mr. Kittredge. I present resolutions of the legislature of the State of South Dakota, favoring the enactment of legislation providing for the ratification of the present agreement with the Rosebud (Sioux) Indians for the cession of all that portion of their reservation lying in the county of Gregory, and praying that it be opened to homestead settlement. I ask that the resolutions may be printed in the Record, and referred to the Committee on Indian Affairs.

There being no objection, the resolutions were referred to the Committee on Indian Affairs, and ordered to be printed in the Record, as follows:

State of South Dakota, Department of State.

United States of America,

State of South Dakota, Secretary's Office:

I, O. C. Berg, secretary of state of the State of South Dakota, do hereby certify that the attached instrument of writing is a true and correct copy of the house joint resolution No. 7, as passed by the legislature of 1903, as the same appears of record in this office, and of the whole thereof.

In testimony whereof I have herunto set my hand and affixed the great seal of the State of South Dakota. Done at the city of Pierre this 29th day of January, 1903.

[Seal]

O.C. Berg, Secretary of State.

A joint resolution by the house and senate of the eighth legislative assembly of the State of South Dakota, memorializing the Congress of the United States to ratify the existing treaty with the Rosebud (Sioux) Indians for a cession of all that portion of their reservation lying in the county of Gregory, S. Dak., and praying that provisions be made for opening said tract to homestead settlement.

Be it resolved by the house of representatives (the senate concurring), That whereas one James McLaughlin, as United States Indian inspector, did on the 4th day of September, A.D. 1901, make and conclude an agreement with the male adult Indians of the Rosebud Reservation, in the state of South Dakota, for a cession of certain described lands lying and being in Gregor County, S. Dak.; and

Whereas said body of land, comprising approximately 416,000 acres, is reputed to be

fertile in soil and rich in all natural reserves, needing only settlement and development to transform it into one of the choicest spots of our great State; and

Whereas in its present state the coveted land brings no revenue to the Indians and they desire to cede it, as evidenced by their treaty; and

Whereas the acquisition of this Territory to the taxable area of the State would mean the addition of thousands to our population and the enlargement of Gregory County, which is now so small it can not maintain a county government without an annual deficit even with an excessive tax levy: Therefore, be it

Resolved, That we, in justice to both the Indians and our State, implore the Congress of the United States to hasten a ratification of the existing treaty and to provide ways and means for the early opening of this splendid body of land to homestead settlement, under such restrictions and conditions as they may deem wise.

[36 Cong. Rec. 626 (1903)]

By the Speaker: A joint resolution of the legislature of South Dakota, relating to a treaty with the Rosebud Indians—to the Committee on Indian Affairs.

[#14A]

[Excerpt from letter dated August 31, 1903 from Inspector James McLaughlin to the Secretary of the Interior (N.A. Group 48, Records of the office of the Secretary of the Interior, Indian Division)]

[p.2] On August 8th I submitted the agreement, herewith transmitted, [p. 3] and invited those assenting to come forward and sign it; and notwithstanding that the council was dominated by the more active opponents of the proposition, 90 signatures were at once obtained, leaving only about 35 of those present who refused to concur.

This large percentage of the assemblage assenting to the provisions of the new agreement, together with the message delivered me by the lieutenant of police from persons favoring the agreement who had returned to their homes, encouraged me sufficiently to make a tour of the several districts of the Reservation, and meet the Indians of the different settlements at the headquarters of their respective districts. I travelled by team about 400 miles over the Reservation, 100 miles through the districts west of the Agency and about 300 miles in the districts east of the Agency, visiting them in the following order: — Spring Creek, Upper Cut Meat, Cut Meat Issue Station, Black Pipe, Little White River, Butte Creek, Big White River, Bull Creek and Ponca Creek,—thus consuming sixteen days, during which time I explained every feature of the agreement at the nine different points above stated, at each of which district headquarters I received quite a number of signatures, a total of 737, which number, whilst being 48 more than half of the male adult Indians of the Reservation, is 296 less than the required three-fourths majority.

(Excerpt from Report of the Commissioner of Indian Affairs, 1904)

Report of Agent for Rosebud Agency, August 25, 1904.

For administrative purposes the reserve is divided into seven districts, with a farmer in charge of each, who makes his residence at the issue station of the district. The Ponca Creek district is in charge of the teacher of Milk's Camp day school, who resides at the school. These administrative officials have direct charge of districts to which they are assigned, under the instructions of the agent, and are charged with the duty of supervising the work of the able-bodied, the issues of rations to the old, sick, helpless, and infirm, as well as the able-bodied during the winter months, the preservation of order, etc. In short, the general welfare of the Indian in all that concerns their material interests is intrusted to these farmers.

[#14B]

[Excerpts from Report of the Commissioner of Indian Affairs, 1903.]

[318] Twenty-one Government day and one Government boarding and two Mission boarding schools have been in successful operation during the year. The reports of the superintendent of the Rosebud School and of the day school inspector are herewith transmitted, and referred to as furnishing the detailed information regarding the schools.

The work of allotting land to these Indians ceased in March last with the death of Special Allotting Agent William A. Winder. In all 4,669 allotments have been made on this reserve.

* * *

[b.522] South Dakota—continued.

Rosebud Agency.

Brulé, Loafer, Lower Brulé, Northern

Two Kettle and Wazhazhe Sioux:

Agency district	1,265
Big White River district	374
Black Pipe Creek district	489
Butte Creek district	899
Cut Meat Creek district	973
Little White River district	561
Ponca Creek district	411

[4972]

[#15]

(Enacted H.R. 10418)

[Act of April 23, 1904, ch. 1484, 33 Stat. 254]

Chap. 1484. — An Act To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

Whereas James McLaughlin, United States Indian inspector, did on the fourteenth day of September, anno Domini nineteen hundred and one, make and conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement made and entered into on the fourteenth day of September, nineteen hundred and one, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

Article I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence

due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating four hundred and sixteen thousand (416,000) acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

Article II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to expend for and pay to said Indians, in the manner hereinafter provided, the sum of one million and forty thousand (1,040,000) dollars.

Article III. It is agreed that of the amount to be expended for and paid to said Indians, as stipulated in Article II of this agreement, the sum of two hundred and fifty thousand (250,000) dollars shall be expended in the purchase of stock cattle, of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children as soon as practicable after the ratification of this agreement, and that the sum of seven hundred and ninety thousand (790,000) dollars shall be paid to said Indians per capita in cash in five annual installments of one hundred and fifty-eight thousand (158,000) dollars each, the first of which cash payments shall be made within four months after the ratification of this agreement.

Article IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have

been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

Article V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement.

Article VI. This agreement shall take effect and be in force when signed by U.S. Indian Inspector James McLaughlin and by three-fourths of the male adult Indians parties hereto, and when accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, U.S. Indian inspector, on the part of the United States, and the male adult indians belonging on the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at Rosebud Indian Agency, South Dakota, this fourteenth day of September, A.D. nineteen hundred and one.

James McLaughlin,
U.S. Indian Inspector.

No.	Name.	Mark.	Age.
1	He Dog	x	65
2	High Hawk	x	50
3	Black Bird	x	62
(and 1,028 more Indian signatures.)			

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Agency, South Dakota; that it was fully understood by them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

William Bordeaux, *Official Interpreter*
Wm. F. Schmidt, *Special Interpreter*

Rosebud Agency, S. Dak., October 4, 1901.

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and the 1,031 Indians of the Rosebud Agency, S. Dak., to the foregoing agreement.

Frank Mullen, Agency Clerk.

C. H. Bennett, Farmer, Cut Meat District.

John Sullivan, Farmer, Black Pipe District.

Frank Robinson, Farmer, Little White River District.

Frank Sypal, Farmer, Butte Creek District.

Isaac Bettelyoun, Farmer, Big White River District.

James A. McCorkle, Farmer, Ponca District.

Louis Bordeaux, Ex-Farmer, Agency District.

Rosebud Agency, S. Dak., October 4, 1901.

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, S. Dak., is 1,359 of whom 1,031 have signed the foregoing agreement, being 12 more than three-fourths of the male adult Indians of the Rosebud Reservation. S. Dak.

Chas. E. McChesney.

United States Indian Agent.

Rosebud Agency, S. Dak., October 4, 1901.

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended and modified, as follows:

"Article I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and

one north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating four hundred and sixteen thousand acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

"Art. II. In consideration of the land ceded, relinquished, and conveyed by article one of this agreement, the United States stipulates and agrees to dispose of the same to settlers under the provisions of the homestead and town-site laws, except sections sixteen and thirty-six, or an equivalent of two sections in each township, and to pay to said Indians the proceeds derived from the sale of said lands; and also the United States stipulates and agrees to pay for sections sixteen and thirty-six, or an equivalent of two sections in each township, two dollars and fifty cents per acre.

"Art. III. It is agreed that of the amount to be derived from the sale of said lands to be paid to said Indians, as stipulated in article two of this agreement, the sum of two hundred and fifty thousand dollars shall be expended in the purchase of stock cattle, of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children, but not more than one half of the money received in any one year shall be expended as aforesaid, and the other half shall be paid to said Indians per capita in cash, and an accounting, settlement, and payment shall be made in the month of October in each year until the lands are fully paid for and the funds distributed in accordance with this agreement: *Provided, however,* That not more than five hundred thousand dollars shall be expended or paid within two years after the ratification of this agree-

ment, and not to exceed one hundred and fifty thousand dollars in each of the following years until the expiration of five years.

"Art. IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

"Art. V. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement."

Sec. 2. That the lands ceded to the United States under said agreement, excepting such tracts as may be reserved by the President, not exceeding three hundred and ninety-eight and sixty-seven one-hundredths acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions, shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to

settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish war or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged: *And provided further*, That the price of said lands entered as homesteads under the provisions of this Act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, four dollars per acre, to be paid as follows: One dollar per acre when entry is made; seventy-five cents per acre within two years after entry; seventy-five cents per acre within three years after entry; seventy-five cents per acre within four years after entry, and seventy-five cents per acre within six months after the expiration of five years after entry. And upon all land entered or filed upon after the expiration of three months and within six months after the same shall be opened for settlement and entry, three dollars per acre, to be paid as follows: One dollar per acre when entry is made; fifty cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and fifty cents per acre within six months after the expiration of five years after entry. After the expiration of six months after the same shall be opened for settlement and entry the price shall be two dollars and fifty cents per acre, to be paid as follows: Seventy-five cents when entry is made; fifty cents per acre within two years after entry;

fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and twenty-five cents per acre within six months after the expiration of five years of said entry: *Provided*, That in case any entryman fails to make such payment or any of them within the time stated all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and held for cancellation and the same shall be cancelled: *And provided*, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry, as now provided by law, where the price of the land is one dollar and twenty-five cents per acre: *And provided further*, That all lands herein ceded and opened to settlement under this Act, remaining undisposed of at the expiration of four years from the taking effect of this Act, shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one purchaser.

Sec. 3. That the proceeds received from the sale of said lands in conformity with this Act shall be paid into the Treasury of the United States, and paid to the Rosebud Indians or expended on their account only as provided in article three of said agreement as herein amended.

Sec. 4. That sections sixteen and thirty-six of the lands hereby acquired in each township shall not be

subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, of the land in said county of Gregory are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Sec. 5. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of seventy-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section four of this Act.

Sec. 6. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein; or to guarantee to find purchasers for said lands, or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided.

Approved, April 23, 1904.

[#15A]

(Legislative history of H.R. 10418)

Rosebud Reservation: bills to ratify agreement with Sioux Indians on (see bills S. 3779; H.R. 10418)

[38 Cong. Rec. 275]

H.R. 10418—

To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Burke; Committee on Indian Affairs
 902.—Reported back with amendment (H.R. Report 443) 1010.—Made special order
 1292.—Debated 1421.—Passed House 1469.—
 Referred to Senate Committee on Indian Affairs
 1467.—Reported back (S. Report 651) 1601.—
 Debated, amended, and passed Senate 4984,
 4985.—House concurs in Senate amendments
 5155.—Examined and signed 5214, 5218,
 5287.—Approved by President 5447.

[38 Cong. Rec. 902-903 (1904)]

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

* * *

By Mr. BURKE: A bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[38 Cong. Rec. 1010]

REPORTS OF COMMITTEES ON PUBLIC BILLS AND
RESOLUTIONS.

* * *

Mr. BURKE, from the Committee on Indian Affairs, to which was referred the bill of the House (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect, reported the same with amendment, accompanied by a report (No. 443); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

[38 Cong. Rec. 1292-1293 (1904)]

SIOUX INDIANS IN SOUTH DAKOTA.

Mr. BURKE. Mr. Speaker, I ask unanimous consent that upon the disposition of the bill now before the House, namely, the urgent deficiency bill, the bill (H.R. 10418) to ratify and amend an agreement with the Sioux Indians of the Rosebud Reservation, in South

Dakota, be made the special order and that it continue to be the special order until disposed of, this order not to interfere with revenue or appropriation bills, or bills upon the Private Calendar, or with any business that is privileged under the rules, and that the bill be considered in the House.

Mr. WILLIAMS of Mississippi. This, I understand, is a bill to open up the reservation in South Dakota.

Mr. BURKE. It is.

The SPEAKER. The gentleman from South Dakota asks unanimous consent that the bill H.R. 10418 be considered in the House immediately after the completion of the urgent deficiency bill, and to remain in a continuing order, not to interfere with revenue or appropriation bills, the Private Calendar, private business, or other privileged matters. Is there objection? [After a pause.] The Chair hears none.

[38 Cong. Rec. 1421-1429 (1904)]

SIOUX TRIBE OF INDIANS, SOUTH DAKOTA.

Mr. BURKE. Mr. Speaker, I demand the regular order.

The SPEAKER. The gentleman from South Dakota demands the regular order, which is the consideration of the bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

The Clerk read the bill, as follows:

A bill to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

Whereas James McLaughlin, United States Indian inspector, did on the 14th day of September, A.D. 1901, make and conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement made and entered into on the 14th day of September, 1901, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

ARTICLE I. The said Indians belonging to the Rosebud Reservation, S. Dak., for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, S. Dak., described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forth-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships 100 and 101 north; thence east along

said township to the point of beginning, the unallotted land hereby ceded approximating 416,000 acres, lying and being within the boundaries of Gregory County, S. Dak., as said county is at present defined and organized.

ART. II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to expend for and pay to said Indians, in the manner hereinafter provided, the sum of \$1,040,000.

ART. III. It is agreed that of the amount to be expended for and paid to said Indians, as stipulated in Article II of this agreement, the sum of \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, to be distributed as equally as possible among men, women, and children as soon as practicable after the ratification of this agreement, and that the sum of \$790,000 shall be paid to said Indians per capita in cash in five annual installments of \$158,000 each, the first of which cash payments shall be made within four months after the ratification of this agreement.

ART. IV. It is further agreed that all persons of the Rosebud Indian Reservation, S. Dak., who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men

heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

ART. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, S. Dak., of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement.

ART. VI. This agreement shall take effect and be in force when signed by United States Indian Inspector James McLaughlin and by three-fourths of the male adult Indians parties hereto and when accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, United States Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, S. Dak., have hereunto set their hands and seals at Rosebud Indian Agency, S. Dak., this 14th day of September, A.D. 1901.

James McLaughlin,
United States Indian Inspector.

No.	Name.	Mark.	Age.
1	He Dog	x	65
2	High Hawk	x	50
3	Black Bird	x	62

(and 1,028 more Indian signatures.)

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Agency, S. Dak.; that it was fully understood by

them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

William Bordeaux, *Official Interpreter.*

Wm. F. Schmidt, *Special Interpreter.*

Rosebud Agency, S. Dak., October 4, 1901.

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and the 1,031 Indians of the Rosebud Agency, S. Dak., to the foregoing agreement.

Frank Mullen,

Agency Clerk.

C. H. Bennett,

Farmer, Cut Meat District.

John Sullivan,

Farmer, Black Pipe District.

Frank Robinson,

Farmer, Little White River District.

Frank Sypal,

Farmer, Butte Creek District.

Isaac Bettelyoun,

Farmer, Big White River District.

James A. McCorkle,

Farmer, Ponca District.

Louis Bordeaux,

Ex-Farmer, Agency District.

Rosebud Agency, S. Dak., October 4, 1901.

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, S. Dak., is 1,359, of whom 1,031 have signed the foregoing agreement, being 12 more than three-fourths of the male adult Indians of the Rosebud Reservation, S. Dak.

Chas. E. McChesney,

United States Indian Agent.

Rosebud Agency, S. Dak., *October 4, 1901.*

Therefore,

Be it enacted, etc., That the said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended and modified, as follows:

"ARTICLE I. The said Indians belonging on the Rosebud Reservation, S. Dak., for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, S. Dak., described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships 100 and 101 north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating 416,000 acres, lying and being within the boundaries of Gregory County, S. Dak., as said county is at present defined and organized.

"ART. II. In considration of the land ceded, relinquished, and conveyed by article 1 of this agreement, the United States stipulates and agrees to dispose of the same to settlers under the provision of the homestead and townsite laws, except sections 16 and 36, or an equivalent of two

sections in each township, and to pay to said Indians the proceeds derived from the sale of said lands; and also the United States stipulates and agrees to pay for sections 16 and 36, or an equivalent of two sections in each township, \$2.50 per acre.

"ART. III. It is agreed that of the amount to be derived from the sale of said lands to be paid to said Indians, as stipulated in article 2 of this agreement, the sum of \$250,000 shall be expended in the purchase of stock cattle, of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children, but not more than one-half of the money received in any one year shall be expended as aforesaid, and the other half shall be paid to said Indians per capita in cash, and an accounting, settlement, and payment shall be made in the month of October in each year until the lands are fully paid for and the funds distributed in accordance with this agreement: *Provided, however,* That not more than \$500,000 shall be expended or paid within two years after the ratification of this agreement, and not to exceed \$150,000 in each of the following years until the expiration of five years.

"ART. IV. It is further agreed that all persons of the Rosebud Indian Reservation, S. Dak., who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blooded Indians upon the reservation; and that white men

heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

"ART. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, S. Dak., of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement."

SEC. 2. That the lands ceded to the United States under said agreement, excepting such tracts as may be reserved by the President, not exceeding 398.67 acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions, shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which those lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish wars, as defined and described in sections 2304 and 2305 of the Revised Statutes, as amended by the act of March 1, 1901, shall not be abridged: *And provided further*, That the price of said lands shall be as follows: Upon all land entered or filed upon within six months after the same shall be opened for settlement and entry, \$3 per acre, to be paid as follows: One dollar per acre when entry is

made; 50 cents per acre within two years after entry; 50 cents per acre within three years after entry; 50 cents per acre within four years after entry, and 50 cents per acre within six months after the expiration of five years after entry. After the expiration of six months after the same shall be opened for settlement and entry the price shall be \$2.50 per acre, to be paid as follows: Seventy-five cents when entry is made; 50 cents per acre within two years after entry; 50 cents per acre within three years after entry; 50 cents per acre within four years after entry, and 25 cents per acre within six months after the expiration of five years after entry: *Provided*, That in case any entryman fails to make such payment, or any of them, within the time stated all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and held for cancellation: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section 2301, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry, as now provided by law, where the price of the land is \$1.25 per acre: *And provided further*, That all lands herein ceded and opened to settlement under this act, remaining undisposed of at the expiration of four years from the taking effect of this act, shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior.

SEC. 3. That the proceeds received from the sale of said lands in conformity with this act shall be paid into the Treasury of the United States,

and paid to the Rosebud Indians or expended on their account only as provided in article 3 of said agreement as herein amended.

SEC. 4. That sections 16 and 36 of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at \$2.50 per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, of the land in said county of Gregory are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

SEC. 5. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$90,000, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section 4 of this act.

SEC. 6. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections 16 and 36 or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided.

During the reading of the bill Mr. FINLEY rose.

The SPEAKER. For what purpose does the gentleman rise?

Mr. FINLEY. I believe that we are reading the bill. Is the bill open for amendment?

The SPEAKER. Not while it is being read. It will be open for amendment when the reading is concluded.

The Clerk concluded the reading of the bill.

Mr. BURKE. Mr. Speaker, this bill provides for the opening to settlement of 416,000 acres of land, now a portion of the Rosebud Reservation, in South Dakota, being that portion of the reservation in Gregory County. In 1901 a treaty was entered into with the Rosebud Indians on the part of the United States, by which the Indians agreed to sell to the Government this land for \$2.50 per acre. That treaty was transmitted to Congress, and because of the fact that it provided that the Government should pay for the lands outright and then take the chance of the Treasury being reimbursed by disposing of the lands to settlers, it never got further than through the Committee on Indian Affairs, which unanimously reported it favorably. It was never given consideration in the House.

Toward the concluding days of the last session of Congress a new bill was prepared, substantially as this bill now provides, and that bill provided that the lands should be ceded by the Indians to the Government, disposed of to settlers under the provisions of the homestead law, the price to be fixed at \$2.50 an acre, as was provided in the original treaty. That bill did not receive consideration in the last Congress because of lack of time, but during the summer that bill was submitted to this tribe of Indians for their acceptance, and forty-eight more than a majority consented to accept the terms of that bill. This bill is substantially

the same as the bill which I have just referred to, except that the committee, in view of a suggestion made by the Commissioner of Indian Affairs, in which he said he had no objection to the passage of this bill provided the Indians were insured of as much money as they would have received under the treaty, instead of fixing the price at \$2.75, which was provided in the bill submitted to the Indians during the summer, fixed the price at \$3 per acre for all lands taken within the first six months and \$2.50 for all lands taken thereafter.

It was thought by the committee that this would certainly insure to the Indians as much money as they would have received under the original treaty, and, in my judgment, it insures their receiving considerably more. There is no opposition to the passage of this measure, so far as I know. The Indian Bureau and the Secretary of the Interior have both approved it, providing we fix a price, as we have done, that will insure the Indians as much money as they would have received under the original treaty. The Committee on Indian Affairs has considered it fully and at length and has spent several meetings of the full committee considering it. The report of the committee is unanimous. I do not care to occupy the attention of the House in making any extended remarks on the bill, and unless some gentleman desires to ask some questions I will reserve the balance of my time.

Mr. FINLEY. Mr. Speaker, I observe that in section 4, reserving school lands, it is provided that the Government pay for those lands. Is that the usual appropriation that is put in all bills of this character?

Mr. BURKE. I am glad the gentleman has asked me that question. I would state that under the enabling act under which the State of South Dakota was admitted to the Union it was provided that sections 16 and 36 in

said State should be reserved for the use of the common schools of that State, and it further provided that as to the lands within an Indian reservation the provisions of that grant would not become operative until the reservation was extinguished and the land restored to the public domain. That enabling act was passed by Congress on the 22d day of February, 1889. In March of that same year Congress ratified a treaty with the Sioux Indians in South Dakota for the cession of something like ten or eleven millions of acres of land, and made an express appropriation, in accordance with the provisions of the enabling act, to pay outright out of the Treasury the money for sections 16 and 36 of that land at the price stipulated for in the treaty.

Mr. FINLEY. Then, as I understand the gentleman, he bases the wisdom or equity for this provision upon the enabling act admitting South Dakota into the Union?

Mr. BURKE. Yes.

Mr. FINLEY. And not otherwise?

Mr. BURKE. No.

Mr. FINLEY. What is the number of acres of land that have been granted by the National Government to the State of South Dakota for school purposes heretofore?

Mr. BURKE. Sections 16 and 36.

Mr. FINLEY. About how many acres does it amount to?

Mr. BURKE. I could not state.

Mr. FINLEY. The State is quite rich in school lands, is it not?

Mr. BURKE. Yes.

Mr. FINLEY. About what amount of money will be required from the Treasury of the United States to pay for the school lands provided for here in section 4?

Mr. BURKE. Not to exceed about \$70,000—I think \$72,000 or \$73,000. I am going to ask to amend the bill by striking out “\$90,000,” and inserting “\$75,000.” The actual amount, I think, will be about \$72,000, as nearly as I can calculate.

Mr. Speaker, I reserve the balance of my time and yield ten minutes to the gentleman from New York [Mr. BAKER].

Mr. BAKER. Oh, make it fifteen.

Mr. BURKE. I hope the gentleman will be satisfied with ten minutes. We want to get through the bill as quickly as possible.

Mr. BAKER. Mr. Speaker, I recognize that it will make little difference when the vote on this bill is taken whether I speak for five or fifteen minutes. Yet, Mr. Speaker, because this bill involves what seems to me a violation of the principle which should obtain with reference to the ownership of land, because it violates the principle which, in my judgment, should obtain in opening public land for settlement, I desire to enter my protest against the bill on those grounds.

I regret very much, Mr. Speaker, that I did not know until a few moments ago that this bill was to be discussed to-day. I should very much have liked a short time, if but an hour, to send for some data to bring to the attention of the House, so as to amplify the few remarks I shall now have to make spontaneously.

Mr. Speaker, what is it that this bill proposes to do? From the standpoint from which I shall discuss the bill we can eliminate the Indians from the discussion. I am not going to raise the question here now as to what the Indians should or should not receive. That is not the point: the point is what is to become of that land when it comes into the possession of the United States and the ownership becomes vested in the people as a whole.

The bill, as its author has just stated, simply carries out a policy which has obtained in the past. Is that not so?

Mr. BURKE. Yes, sir.

Mr. BAKER. Now, Mr. Speaker, that policy to my mind is a fatally defective policy—a policy which in a large measure is responsible for the economic conditions that exist in the United States to-day. I know that my friends on the other side will say that the economic conditions in this country were never more prosperous than they are now. Let us concede for the sake of argument that is so; that they are more prosperous than they ever were; yet that does not alter my judgment that they would have been infinitely more prosperous than they are, infinitely more prosperous than they have ever been, but for the fact that the United States have followed this fatally defective policy and have permitted the alienation of its public lands. They have permitted individuals to purchase the land, and no matter how low the price at which they bought the title the increased value which comes as the result of generations of development, generations of energy applied by the people as a result of the influx of an enormous population—aside from the natural growth—whatever the cause of the increase of value, goes into the private pocket of the individual who was fortunate enough, you say shrewd enough, quick-witted enough, or anything else you may choose to call it, to get there a little ahead of somebody else and (by original entry in many cases) obtained it for nothing or for a mere song, a price that may have been the real value at the time of the purchase, but which represents a ridiculously small proportion of the value which has subsequently attached to that land as a result of population coming there.

Now in what particular does this policy violate what should in my judgment be the policy of the United States? It violates it in this way: It says to the individual who is shrewd enough to go there and arrives a day, a month, or a year ahead of somebody else—I care not what the period of time may be—he shall have the exclusive “ownership” of that land; he shall enjoy all the value which subsequently attaches, no matter what causes that increase of value.

In other words, you are by this and similar bills perpetuating—you are offering a premium to engage in land speculation in the United States, and land speculation is the curse of this country, as it has been the curse of every civilized country in the world.

The evil results which have followed the existing systems of entry and purchase of public lands are clearly illustrated in an article by J. L. McCreery, of this city, entitled “Our system of distributing the public lands.”

In illustrating some of the fraudulent methods employed, which no doubt in the main are due to the fact that the present system offers great premiums in the shape of whatever increment of value may subsequently attach to land by reason of increase of population, etc., he says:

Let us suppose (to invent a name) that the New York and Nebraska Land and Cattle Company start in business in the far West. It has in its employ 100 “cowboys.” The fertile valley of a stream is selected for its operations. At the instance of the manager of the company each of the cowboys files a preemption declaratory statement for a quarter-section (160 acres) of land. The land is selected in such a form as to cover as much space as possible up and down the stream. One

man’s four 40-acre in a “string” can often be made to cover a mile of the water course; sometimes not more than three-fourths of a mile. A hundred entrymen can thus take in 75 miles of the stream—the richest part of the valley.

The preemption law requires that a person purchasing land thereunder must prove that he has inhabited and improved such land. It does not say how long he must have done so. The General Land Office has supplied this omission and carried into effect what it conceives to be the spirit and purpose of the law by establishing a rule that such residence and improvement must have continued for at least six months, in order to afford a presumption that the settler is acting in good faith. So a few days after the expiration of six months from the date of the entry the cowboys, in “squad,” appear at the local land office and “prove up.” It is not necessary to have created a dwelling house upon and improved the land if the entryman and his two witnesses have sufficiently elastic consciences. A has for witnesses B and C; B has for witnesses A and C; C has for witnesses A and B. The land is paid for in cash, which the company furnishes. The cowboys step over to the nearest lawyer’s office, or more likely the company has its own lawyer, and deed every acre of land to the company.

Having exhausted their right under the preemption law, they forthwith proceed to enter as much more land under the homestead law. At the end of six months they pay (with money furnished by the company) for the land under the commutation provision of the homestead law, and at once transfer it to the company.

But the end is not yet. True, the preemption act and the homestead act each provides that no person shall have the benefit thereof more than

once. But at this stage of the proceedings the cowboy that last year made preemption and homestead entry of certain land under the name of John Brown now makes entry of another quarter under the name of Nicholas Yost; Frank Smith becomes Theophilus Baxter; Henry Jones becomes Philip Lingenfelter; and seven months later the syndicate obtains possession of 30,000 acres more of the best land in the State.

And by and by the immigration of honest settlers begins. They push into this region only to find that all the land worth having up and down that water course for a hundred miles has passed into the hands of this land syndicate. There is, at a moderate estimate, a space of 10 miles on each side of this stream and whatever tributaries run into it—20 miles in width by a hundred miles in length, covering an area of 2,000 square miles—in which no bona fide settler can find a foot of water front.

Why do men engage in these gigantic land frauds? It is conceivable that they would do this, that such practices would be engaged in, if the leasing system obtained, if they knew that no matter what the increase in the value of the land its annual rental would increase in like proportion? Certainly not! They do this, they are willing to blacken their own souls because of the great prizes offered them, for the possibility of a large increase in the value of the land, which at some time in the future they will be able to squeeze out of the genuine settler, the man who is really looking for a quarter section of land upon which to build a home and rear a family. Periodical appraisements at brief intervals would destroy this form of land speculation and all the fraud which attaches to it.

The methods which Mr. McCreery cites are no doubt largely responsible for the existence of enormous land holdings by companies and individuals. Every schoolboy knows the enormous increasing power of accumulated capital. As these large estates increase in size and number, the greater will be their power to absorb the smaller farms adjoining them. Our farms of 500 acres and over would now cover an area more than five times the size of the great State of Indiana, with its 2,000,000 and over inhabitants. That is to say, about 115,940 men own a vast area of about 126,000,000 acres of the best farming land in the world, and which should be divided among 10,000,000 people, and which is capable of giving support, self-employment, homes, and happiness to that vast number of people. And when we consider the further awful fact that about one-half of this vast expanse of 126,000,000 acres of land, which within the memory of men still living was parceled out by our Government to our citizens in small farms, is now at this early day absorbed by and owned by 31,546 men and corporations, the situation is still more alarming. In one of his speeches Daniel Webster once said: "A free government can not long endure where the tendency of laws is to concentrate the wealth of the country in the hands of a few, and to render the masses poor and dependent." In the light of the above facts, can there be any doubt as to the tendency of our present land laws, and that radical changes in our land laws are absolutely necessary?

The extent of many of these large estates is simply astounding, as is shown by the following list of a very few of the large land owners of this country:

	Acres.
Col. D. C. Murphy	4,068,000
Texas State Fund Association (owned by four men)	3,000,000

The Standard Oil Company	1,000,000
John D. Dwight, a farmer in North Dakota (nearly as large as Rhode Island)	704,000
Ex-Senator Dorsey	500,000
E. C. Sprague	500,000
Miller and Lux (San Francisco)	450,000
Mr. McLaughlin, of California	400,000
William A. Chapman	350,000
New York syndicate	300,000
Surveyor-General Beals	300,000
Texas Land and Cattle Company	240,000
Bixby, Flint & Co.	200,000
Thomas Fowler	200,000
Abel Stearnes	200,000
The Murphy family, of California	156,000
G. W. Roberts	140,000
Virginia Coal and Iron Company	100,000

But a still more alarming feature lies in the enormous alien ownership of our land. In addition to the numerous smaller alien holdings here, fifty-six foreign persons and corporations own more than 26,000,000 acres of our land—an area equal to that of the great States of Ohio, Kentucky, or Virginia. The enormous size of some of these holdings of land in this country by foreigners may be seen by the following partial list:

	Acres.
Baron Tweeddale	1,750,000
Byron H. Evans	700,000
M. Ellerhousen	600,000
Robert Tenant	530,000
Duke of Sutherland	422,000
W. Whaley, M.D.	310,000
Duke of Northumberland	191,460
Duke of Devonshire	148,626

Earl of Cleveland	106,659
Lord Dunmore	120,000
Benjamin Neugas	100,000
Earl of Carlisle	78,540
Sir W. W. Win	91,612
Duke of Rutland	70,039
Lord Houghton	60,000
Lord Daraven	60,000
Duke of Bedford	51,085
Earl of Brownlow	57,799
Earl of Derby	56,698
Earl of Cawdor	51,538
Lord of Londonsboro	52,655
Duke of Portland	55,259
Earl of Powls	46,095
Lady Willoughby	59,312
Earl of Yarborough	54,570

And there are hundreds of smaller foreign holdings of from 500 acres up.

The ownership of our land by foreign land syndicates is also simply astounding. A Dutch syndicate owns 4,500,000 acres of our land in New Mexico and adjoining Territories. Another Dutch syndicate owns 3,000,000 acres in Texas. An English syndicate owns 1,800,000 acres in Mississippi. A Scotch syndicate owns 500,000 acres in Florida.

Now, Mr. Speaker, it is impossible for me to do anything more than call attention to the foundation principle; but let me ask what has followed the violation of that principle and what should be the policy of the United States toward the few remaining million acres of land that it controls? No land should be finally alienated or given into absolute permanent private possession.

The beneficent results which would follow the adoption of the leasing policy instead of outright sale with our remaining public lands are clearly set forth in an address by Frederick S. Elder, professor of mathematics at the Oklahoma University, before the Oklahoma bar at Guthrie, January 6, from which I quote as follows:

DEFENSE OF A LEASING POLICY.

Mr. Chairman, Members of the Oklahoma Bar Association, and Citizens of Oklahoma: Two million fifty-six thousand acres is the measure of Oklahoma's present public-land endowment, and since seventeen-twentieths of this is expressly reserved for the support of education I shall feel justified in referring to the entire grant as the school lands in Oklahoma.

Eighteen months ago the lessees in Territorial convention passed and published resolutions to force the sale of these lands to themselves as "raw lands," and declared, with a vigor calculated to strike terror to the stoutest-hearted politician, "We pledge ourselves to the support of such men to the Territorial legislature as will do all in their power to bring the school lands on the market in accordance with the above resolutions." And it may be that with this threat in mind the State Capital, not without knowledge of the subtle operations of legislatures, was recently moved to cry out: "Who does not believe that they (the lessees) would control the first legislature and create a legislature that would sell the lands?"

It will be noted that those who desire to gobble Oklahoma's public lands threaten political annihilation to all who dare oppose their outright sale. It is the same old story again. Any men who dare oppose the demands of the shrewd and powerful, who insists that

in the treatment of this question, as of any other question, that the interests of the whole people should determine are met with the organized opposition of those who seek to live in the sweat of other men's brows, are threatened with political annihilation if they dare assert the equal right of all men to use the earth.

Turning back a few pages of history to discover what blunders Oklahoma should avoid, we find Ohio's grant of a million and a half acres, with no constitutional protection, becoming the prize of organized plunder. One lot of 10,000 acres went into perpetual lease at 12 cents per acre. The university endowment of two townships, 46,080 acres of the choicest lands of the State, is under perpetual lease at less than 10 cents an acre, and a third township of 23,040 acres is under perpetual lease at less than 25 cents per acre. Thousands of acres were sold for 50, 25, and 10 cents per acre.

Of course, a perpetual lease is equally as bad and in effect amounts to an outright sale. What Mr. Elder contends for, and which I also contend for upon this floor, is for a lease for a brief period of years with a reappraisal in the case of such land as is involved in this bill (remote, I assume, from present civilization) every fifth year.

That this system is entirely feasible, despite the implied criticism of my friend from Iowa, is shown in the figures which Mr. Elder quotes of the income which Oklahoma has received from its public lands.

Total net income from leasing Oklahoma's public lands for fiscal years ending June 30—	
1891	\$4,536.82
1892	21,346.13
1893	19,164.67
1894	46,586.29

1895	88,627.97
1896	71,740.68
1897	98,467.81
1898	173,442.83
1899	133,047.19
1900	177,190.24
1901	247,608.61
1902, cash bonus above rental in western counties	188,307.24
1903	323,245.60

Not a cent of this income raised by taxation but as a just equivalent for the valuable privilege of raising crops and making a living without having first to invest a fortune in a farm, and, contrary to the idea of any hardship having been worked upon the occupant, his great advantage over his landowning neighbor is shown in the report of ex-Secretary Huston for 1902, where he says (p. 21): "Computing the interest on the value of similar lands at 7 per cent and adding the usual taxes, the investment of the landowner will be found to be two or three times the rental according to the last appraisalment."

It will be noted that Mr. Elder calls the rental paid by the lessees "a just equivalent for the valuable privilege of raising crops and making a living without having first to invest a fortune in a farm." Of course he here uses the customary terminology, which shows how far we have strayed from correct principles, that even a gentleman like Mr. Elder, when advocating the leasing system, speaks of it as a "valuable privilege," because under the lease system "it is not necessary first to invest a fortune in a farm." If the lease system had obtained from the first, no such idea could have grown up. It is only because we have followed the fatal, aye wicked, policy of England and European countries, that

anyone considers it a "valuable privilege" to be able to use land without first paying in as the purchase price a twenty-year capitalization of its rental value.

But perhaps the best illustration of the advantage of the leasing system is shown in his citation of the school lands of Chicago. He says:

The school lands of Illinois afford us the best illustration to be had of the surpassing advantages to the State of a system of leasing, of the manner in which a land endowment increases in value proportionately with the growth of population and of the necessity for a periodic revaluation of the land. I refer to the school lands located in the city of Chicago. The heart of the city from Madison street south to Twelfth and from State street west to Halsted was one school section, No. 16. Here is where the twelve and sixteen story buildings stand. Here you find the post-office, the Rookery, the Board of Trade, the Women's Temple, and scores of others like them. By some strange fortune hardly understood a block at State and Madison streets was reserved from sale with certain other sundry lots. These, with a few more tracts acquired later, are held to-day by the Chicago board of education and the ground rent amounting to half a million dollars annually is being turned into the school fund for the payment of teachers' salaries.

The leases are for fifty or a hundred years. The ground alone is leased and the lessees put up their own buildings, costing hundreds of thousands of dollars. Of these the Chicago Tribune pays \$30,000 a year for one-fifth of an acre, the McVicker Theater \$27,000 for thirty-six hundredths of an acre, Joseph E. Otis \$25,000 for eighty-eight thousandths of an acre, this last being at the yearly rate of \$289,115 per acre, and so on

for others. Yet nobody is wronged. It is a plain business proposition. No sane man pays more rent than he ought.

Neither is the community nor any individual wronged any more by the payment by the Chicago Tribune of \$30,000 into the school board treasury than by the payment by the Women's Temple Company of \$40,000 a year into the private pocket of Mr. Marshall Field for the use of lots that were once a part of the same original section 16.

How fatally defective the sale policy has been is clearly illustrated in two of the cases he cites, namely, the payment by the Chicago Tribune of \$30,000 into the school board treasury and the payment by the Women's Temple Company of \$40,000 a year into the private pocket of Mr. Marshall Field. When Mr. Field uses a part of the immense income which he is deriving from his ownership of a part of the original school lands of Chicago and builds a library therewith, we are invited to laud him as a public-spirited citizen. How much better it would have been for that city if, instead of alienating the larger part of its school lands, it had retained the unearned increment by leasing them, as in the case of the land beneath the Rookery and the Chicago Tribune buildings. If this had been done Chicago would not have to wait upon the "philanthropy" of any of its citizens, but would have an ever-increasing fund, which it could apply not merely to the erection of libraries and for the maintenance of its schools, but for every other communal purpose. Of course, it would not then have these ostentatious gifts of libraries or museums, but neither would it have its fearful contrasts which are directly due and are inseparable from this system of alienating the public

lands, viz, the existence on the one hand of the multimillionaire and on the other of hundreds of thousands who are practically paupers.

Even South Dakota has 1,531,900 acres of land under lease, or nearly four times the amount involved in this bill, so that I am warranted in assuming that the leasing system possesses no insuperable obstacles and is workable even in that State.

One of the most vivid illustrations of the result which follows the outright sale of public lands is cited by Mr. Elder in the case of the school lands in Blair County, Tex., which were sold at \$3 an acre on forty years' time at 4 per cent, now yielding the State of Texas 12 cents per acre, while the present owners are able to pocket the difference between 12 cents and three to four dollars per acre which they secure as rental from sublessees.

That the present system results in the creation of a large number of tenant farmers the census report clearly shows, but whereas the leasing system would result in the people, as a whole, obtaining the benefit of whatever increment of value might attach to these public lands as a result of increase of population, improvements in government, increase of transportation facilities, or from any other cause, the existing system results in this increment of value going into private pockets and in the building up of great private fortunes.

The census reports show in these agricultural States the following percentage of tenant farms:

State.	1880.	1890.	1900.
Ohio	19.3	22.9	27.5
Indiana	23.7	25.4	28.6
Illinois	31.4	34.0	39.3
Iowa	23.8	28.1	34.9

Kansas	16.3	28.2	35.2
Nebraska	18.0	24.7	36.9
Georgia	44.0	53.5	59.9
Alabama	46.8	48.6	57.7
Mississippi	43.8	52.8	62.4
Louisiana	35.2	44.4	58.0
Texas	37.6	41.9	45.7
Entire United States	25.6	28.4	35.3

More than one farm in three throughout the entire United States is a tenant farm.

As Mr. Elder well says, the Territory in which he lives, Oklahoma, will not avoid a tenant system by selling its land. It is rather a question as to who shall be the landlord and to whom shall be paid the ever-augmented rent which increase of population, etc., creates, whether it shall be paid to a State or Territory or to private individuals.

Mr. Speaker, by this bill you say to the individual, as has been said for generations in the past, that he who is smart enough, cunning enough, or shrewd enough to forestall the possible development of that community shall reap the enormous advantage that comes thereby; but that is not all. That is bad enough. It is bad enough that by such a policy you create the Astors, for instance, who are now receiving an annual rental value from land in the city of New York a hundred times in excess of the purchase price that John Jacob Astor paid for that land.

It is bad enough that by this act you are creating millionaires and multimillionaires, because I want to say that, with very few exceptions, such as tariff bounties and patents, you can trace the enormous wealth of the plutocrats of this country to the fact that they have been permitted to monopolize extremely valuable lands. It is not alone the land in the great cities that is

valuable and that creates millionaires, but these narrow strips of land which are called rights of way, running from New York to Buffalo, New York to Chicago and San Francisco, New York to New Orleans, from Chicago to New Orleans, and everywhere else over this country, these rights of way monopolized by private individuals are extremely valuable and are the basis upon which the enormous mass of "water" in their securities simply represents legalized power to extract tribute from the people and creates the millionaire and the multimillionaire in the United States, as it has created the millionaire in every other country in the world.

WATER IN RAILROAD STOCKS.

How large a proportion of the stocks and bonds of the railroads of the United States is water—i.e., represents no tangible assets, but merely the capitalization of tribute—is indicated in the statement made to me on more than one occasion by a gentleman who was one of the great railroad lawyers of the country, Thomas G. Shearman, who had not only been attorney for some of the great railroad systems—among others, for James J. Hill, of the Great Northern—but at the time of his death was counsel of that great Rockefeller institution, the National City Bank. Mr. Shearman repeatedly said, "that neither the preferred nor the common stock of the railroads of this country represented any actual investment of capital (if we exclude money paid and stock issued to legislators—not legislatures—for their franchises), but that the railroad as a whole had not originally cost to exceed 85 per cent of the par of the bonds; that from 25 to 50 per cent of the preferred was issued as an extra inducement to the bankers who bought the bonds, and that the

balance of the preferred and practically all of the common stock was divided between the promoters of the railroad, the legislators, and the intermediaries who secured the franchises.

Now, Mr. Speaker, what should be the policy of the United States? The policy of the United States should be to lease these lands and all other lands which it owns; to lease them for short periods of years, and at the end of such short period let there be another leasing, giving to the Government whatever increment of value has attached to those lands by reason of the increase of population that has taken place in the meantime, by reason of the increase of invention, by the improvements of government, or anything else. For you must remember that there is no invention, there is no improvement of government, fire, police, or anything else, there is no increase of population, but what adds to the value of land. The policy of the Government, as I say, should be to lease the land for brief periods, and at the end of those periods of lease the land should be reappraised and men should be permitted to bid, and if some one else beside the owner of the improvements gets the land of course he would be recompensed the full value of the improvements.

Mr. LACEY. I should like to ask my friend how many orchards, he thinks, would be set out in Dakota and Iowa if a man had a three years' lease on the land and the chance of somebody else taking it away from him at the end of that time?

Mr. BAKER. I will answer the gentleman from Iowa by saying that I have said nothing whatever about the length of the period of lease. My own judgment, however, is that it ought not to be more than five years. Therefore, I will meet his question. Let me say to the gentleman that if the owners of the land are

assured, as they will be, that they shall have the preference of opportunity to secure the new lease, there will be no difficulty. And I will say that the people of the United States are not going to pass any law interfering with the present system of land tenure that does not to a very large extent favor the men who are in possession of the land. Why, the whole system has been to favor those men in the past.

My friend from Iowa asks "how many orchards would be set out in Dakota and Iowa if a man had a three years' lease on the land and the chances of somebody else taking it away from him at the end of that time."

I do not imagine that the people of Iowa or South Dakota are much different from those of Illinois. In the latter State one man, really an alien, Lord William Scully, of London, owns from fifty to sixty thousand acres of the best farming land there. We are told "that he rents it at the highest cash rental, requires the tenants to build their own houses, barns, etc., and until the State prohibited it they had to pay the taxes on the land. Since then he has added the tax to the rent." From his tenants he receives about \$150,000 per annum for the privilege of merely existing on *his* soil.

This shows not merely that men will rent land, but that they are doing so on a large scale from private individuals, and I want to call the attention of the gentleman from Iowa to this, for here they not merely lay out their own orchards, but they build their own houses, barns, etc., upon this rented land. And they are compelled to do so because of the policy which is perpetuated in this bill under which individuals are encouraged to engage in land speculation on a gigantic scale.

They are encouraged, aye, almost invited, to engage in the shameful practices I have referred to. Because of the tremendous prizes which this system offers, fraud, robbery, and sometimes arson are engaged in. Any and all means are adopted by the shrewd, cunning, and unscrupulous, who are frequently even in these cases the rich and powerful, to get title to immense tracts of the public land, not for occupancy and use, but to withhold from use, for the more land thus withheld the greater premium these men can squeeze out of the real settlers either in original purchase price or in annual rentals. That even the possession of great wealth does not deter men from engaging in such practices is shown in the decisions of the General Land Office, volume 12, January 1 to June 30, 1891, which, on page 34, recites:

That during the month of April, 1877, 151 desert-land entries were filed in that (Visalia, Cal.) land office, covering 34,978 acres, which at once passed into the hands of Mr. J. B. Haggin, and for which he paid to the receiver \$8,744.45. Haggin's claim was that he had loaned money to these 151 entrymen, and that they had assigned to him their "final certificates."

What the present value of these 35,000 acres of land may be I have no means of knowing, but it is quite possible their ownership thus obviously fraudulently acquired is the basis of at least one of the millions he is reputed to possess.

Time and time again we are told that perpetual ownership of the fee is absolutely essential to induce men to cultivate the land. It is constantly asserted that unless the land is sold for all time the occupier will not improve it; that, according to the inference of the query of my friend from Iowa, no one will plant orchards thereon. This, in the face of the fact that for

over three hundred years the leasing policy—the policy of paying the royalty for the use of the land into the public treasury instead of into private pockets—obtains in Freudenstadt, Germany, as set forth in an article by Henry Labouchere in his paper, the London Truth. He says:

For instance, there is Freudenstadt, a hamlet in the valley among the Alps in the southwestern part of the German Empire, 45 miles of Stuttgart. That region has been favored with but few natural resources; but between three and four hundred years ago an old monk got the notion into his head that, while whatever a man produced by his labor might belong to him individually, whatever natural wealth or resources were found in a given region belonged equally to all the members of the community inhabiting that region. This theory and practice has been pursued ever since. In this region are some pits of valuable fire clay, which the people dig and pile up for purchasers. The men who do the digging receive day's wages; but when the clay is sold the pay for the clay itself—what is called "royalty"—goes into the treasury. Upon the hillsides is some surplus timber. The men who cut down and pile up the timber are paid day's wages; when the timber is sold its value as it stood uncut upon the stump—in short, the "stumpage"—goes into the treasury.

What a pity a few thousand such monks, intelligent in economics, did not come to this country instead of the William Penns who transplanted here the English system of selling the land.

The income from these sources pays their share of the tax levied for the support of the German Empire, pays all their own officials, builds their schoolhouses and pays their teachers, builds their

churches and pays their priests. The people have not been taxed a cent in three hundred and fifty years. Their income always exceeds their expenditures. In 1882 this surplus was divided among the inhabitants per capita, each man, woman, and child receiving (in terms of our money) \$13.55. The amount distributed in 1883 would have been \$16.55, but the citizens voted to apply it to building waterworks.

The folly of the present system of permanently alienating the land is clearly set forth in Mr. McCreery's article, from which I quote:

The refusal of the Government to use for its own support the rental value of its ordinary land, the royalty of its minerals, the stumpage of its timber, etc., renders it necessary to pass other laws most oppressive, unrighteous, and demoralizing. The tariff laws, inciting to smuggling, provoking perjury in undervaluation, and when honestly enforced woefully discriminating against the poor man. Internal-revenue laws, inducing the making of "moonshine" whisky, the murder of revenue officers, and other forms of lawlessness.

But when I ask the average farmer, "Would you not like such a change in the tax laws as would relieve you of one-half the tax you are now paying, and place it on the shoulders of the land speculators, the mine owners, the timber syndicates, the oil companies, and others who are now enriching themselves by monopolizing the bounties of nature?" he answers, "The old plan, by which I and my ancestors have been fleeced in the past, is good enough for me." When I ask the average laborer, "Would you not like a system of taxation that would furnish employment to a million more workingmen than can now find employment [half a million in the cities and

another half a million in the country] and raise the wages of all?" he turns upon me with a sneer and says, "You are a crank and an anarchist. Go hence!"

I could very well afford to go, for while the farmer and the workingman are paying twice the tax they need to they are also paying at least half of mine. But alas! this is not merely a question as to which shall pay his own or the other's tax, but one of honesty or morality and national welfare. Aside from the fact that our system of land laws opens invitingly wide the door to gigantic frauds upon the Government and upon individuals and offers an enormous premium on perjury, their effect, even when enforced in strict accordance with the intent of the legislative power that enacted them, is conspicuously pernicious.

He says:

If it be demoralizing to train a nation to become a set of liars when confronted by tax assessors or custom-house officers; if it be demoralizing to educate the young to the idea that labor is degrading and that the most respectable and honorable thing in life is to enrich one's self by being a parasite upon one's fellow-creatures; if it be demoralizing for the Government not only to throw away its richest treasures, but to do so upon a lottery plan which encourages gambling and a horde of kindred vices; if it be demoralizing to increase the number of the landless multitude who have no stake in the welfare of our nation; if it is demoralizing to have a million idle men among us, necessitating a "slum" ward in every city and a great army of tramps traversing the country, then I have proved the proposition that, in addition to being the prolific parent of fraud and perjury, our land laws, even when honestly and faithfully

administered, are a source of widespread and woeful demoralization.

You say, if you do not permit private ownership, there will be no security of tenure; there will be no inducement for people to go on and improve their land. To any man who cares to make that statement upon this floor I wish to say that some of the greatest buildings in the city of New York are situated upon leased land—that some of the most valuable buildings in the city of New York have been erected upon leased land, upon land owned by the Sailors' Snug Harbor corporation, land that for generations has been leased from time to time. The entire usufruct of that land goes to that private corporation—the Sailors' Snug Harbor—and does not go to the men who own the buildings, who use the buildings, and carry on great mercantile affairs. Yet you will say that it is necessary that there shall be permanent private ownership of land before men will engage in business enterprise.

Mr. Speaker, go into any one of the large cities of the United States and what will you find? You will find hundreds of thousands of individuals congregated in such a small area that it is scarcely possible for them to breathe separately. The crowded condition of New York City, the crowded condition of Chicago, the noisome slums that exist in those and other cities and that also exist right here in the capital of the United States, are directly due to this policy of encouraging people to withhold land from use, so that they may be able to exact an ever-increasing tribute from those who subsequently use it, after paying a brigand's ransom for it.

I have said that the existence of slums in our great cities is directly traceable to the policy which is

continued in this bill of selling the public lands outright. This policy of outright sale, together with the policy of assessing unused land at but a fraction of its value, creates overcrowding—that is, the slums—and which has been recently shown to exist right here in Washington to an alarming degree. To what extent land speculation is encouraged in the District of Columbia by this foolish policy of almost entirely exempting unused land from taxation is shown in the case of Paul T. Bowen, who in January, 1896, then being a clerk in the Treasury Department, purchased 2.3 acres of land in the northwestern part of the District, near Chevy Chase, for \$1,840. When he bought it it was assessed at \$225 an acre. The following year the assessment was reduced to \$200 an acre as "agricultural" land at \$1 on the \$100, and was continued at that rate until January, 1901, when he sold the land for \$5,000, making a net profit of \$3,137—170 per cent—in five years. This land sold for about \$2,200 an acre and was assessed at \$200 an acre—about one-eleventh of its value. I suppose the assessors assessed it as "agricultural land" so as to help the farming industry.

The following from the Washington Post gives but one illustration of the results that follow this encouragement to land speculation:

[Washington Post, January 8, 1902.]

The object of the resolution, argued Mr. M. I. Weller, was to provide for an equilization of taxation and proper valuation of those parcels of land held for speculative purposes. The Government recently acquired for \$75,000 a plot containing 7½ acres from a tract of 250 acres. The portion bought by the Government was about one-thirtieth of the whole, and the property was valued by the assessors at \$85,000. The actual

valuation tract was about \$1,200,000, and in the opinion of real estate men the price paid by the Government was by no means high. Another instance of the same kind, though more startling, was shown by Mr. Weller. The Government, he declared, recently acquired another piece of property beyond the city limits, for which \$25,000 was paid. He had the curiosity to look up the valuation on the assessment books and found it to be \$1,400—less than 6 per cent of the amount the Government paid for it.

One of the disastrous effects which have followed our adoption of the English land system, which is perpetuated in this bill, is set forth in an editorial paragraph in a recent issue of the Public, a paper which I stated on a previous occasion discusses current affairs in a manner that can not help but clarify the thought of those who read its editorials:

How American sympathy went out to the evicted Irish some years ago, when as many as 3,000 families were turned out of their houses for nonpayment of rent! But 60,463 families were evicted in the city of New York, Manhattan Borough alone, during the year 1903 without exciting special wonder. Yet where is the difference? Apparently the only difference is in the fact that New York evictions last year were about twenty times as many as in the worst year of Irish evictions. In proportion to population the disparity is much greater. Whereas the Irish evictions of the heaviest year numbered about 1 to every 1,300 of population, those of New York numbered about 1 to every 35 of population.

Doesn't this constitute an indictment of the present system of selling the public land, thus encouraging land

speculation, which has produced the same evils here as have afflicted Ireland for generations?

I have said that our policy of permanently alienating the public lands was copied from England. That is true. I wish I could say it is also true that this country is ready to follow England in a change in this very policy which she seems to be on the eve of making, or at least which she gives unmistakable signs of being likely to do in the near future. My Republican friends some five years ago suddenly became such great admirers of England and the policy of territorial aggrandizement of her Tory ministers that they "benevolently assimilated" the Filipinos. Recently they have been even more warm in their expressions of admiration for Joseph Chamberlain's cynical, retrograde policy. No more are we told that it is necessary to twist the British lion's tail on every occasion that offers; on the contrary, our American Tories even seemed to be about to invite that renegade radical, Chamberlain, who is out-Torying the Tories, to come over here and take charge of the rapidly approaching campaign for "protection and plutocracy"—I beg pardon, for "protection and labor."

I admit that their pro-Chamberlain ardor has apparently somewhat cooled with the English election returns of the past six weeks. With constituency after constituency, rural as well as urban, recording themselves against a reimposition of the corn laws or any other form of protection, our Republican friends are probably not quite so sanguine of what will come out of a British general election.

While it is gratifying to observe that Chamberlain is not succeeding in his attempt to hoodwink the British workingman into believing that he can lift himself up by his boot straps—that he can tax himself rich, that a tax upon foodstuffs will benefit him—it is even more

gratifying to observe that the Liberal party there, the prototype of the Democratic party here, is not content to meet Mr. Chamberlain with the mere negative proposition of "leaving well enough alone," nor to emulate Mark Hanna in his "stand-pat" policy, but are rather showing an unmistakable disposition to go to the root of the matter.

One of the great London magazines, the *Contemporary Review*, has in its January number an article entitled "The need of a Radical party." If written for American consumption, I suppose it would have called it "The need of a radical Democratic party."

This article, in describing what is needed to combat and successfully overthrow the revival of protection, says:

[From *Contemporary Review* for January.]

There remains the condition of a great question which will fire men's imaginations with the feeling of a distinct and vital need. Can there be any doubt that the land question answers to this description? "Man is a land animal," says Henry George, and in England man and the land are parted. It is not surprising, therefore; that not one, but a thousand currents of thought flow into this channel. What, for example, is the one solid feature of the national economy which gives force to the revival of protection? The decline of agriculture, the fact that a yearly decreasing body of Englishmen live and work on the soil, and a yearly decreasing proportion of food is raised on English land. From 1851 to 1891 the number of agricultural laborers has declined 36 per cent; during the ensuing ten years a further decline of 25 per cent has taken place, while in fatal testimony to the tendency to make land the sporting ground of the rich rather than the patrimony of the entire

people, the number of gamekeepers has increased 25 per cent in the same period. Is it possible to state a fact of greater social significance?

It may be profitable to ask right here why the number of English agricultural laborers has declined 52 per cent in fifty years, while gamekeepers have increased 25 per cent during that period. The answer is not hard to find. It is found in a system of taxation in England, as here, which places nearly all the burden of local taxation upon improvements and upon personal property, while land values almost escape taxation. Let England but reverse this policy. Let her exempt improvements and other forms of labor products from taxation and place the burden of taxation where it naturally belongs—on land values—and her dukes, marquises, and earls will no longer find it profitable to breed rabbits and foxes. The land will then be cultivated, and farm laborers will not need to immigrate here or to Canada to look for employment. It is land monopoly, made possible because land is not taxed according to its value, that drives the farm laborer from the country of his birth, while gamekeepers are employed to drive his fellow off of "my lord's" land. Our policy of selling the public lands and then placing the burden of taxation upon the settlers' improvements, while the land speculator almost entirely escapes, is producing in America the same evils.

The writer goes on to describe further the desertion of English fields and the degradation of the landless laborers, and asks: "What are the remedies?" He answers:

Not the discredited device of protection, which the laborers will not have at any price, but the reform of our land system, for that system

furnishes the most effective bar to the application of the wonderful discovery that the old Malthusian specter of the pressure of population on the means of subsistence is laid forever, and that, as Prince Kropotkin shows, the land of England could sustain out of its own resources not merely the foreign-fed multitudes of to-day, but double and treble that number.

The writer continues:

Municipalities, distracted with the growing burden of improvements, the increasing difficulties of traction and urban extension, the appalling evils of overcrowding, are rapidly coming to Mr. Booth's conclusion that the taxation of ground values lies at the root of the housing problem.

As it is inevitable that we in this country must ultimately conclude.

The article then shows the reasonableness of this method of taxation and violently attacks Mr. Chamberlain's proposals, calling them a "monstrous piece of economic atavism"—an attempt to shift more and more of the burdens of the state upon industry and wages.

The conclusion of the author is that "the land question is ripe for action."

The Contemporary Review is not alone in pointing to the taxation of land values (in England sometimes termed the "taxation of site values," at other times "taxation of ground rents") as the policy which the Liberal party must adopt to successfully and completely defeat Chamberlain's protectionist propaganda, for the London Speaker, the leading Liberal weekly, in its editorial of January 9, says:

We have to attack not merely the false remedies the protectionists are offering us, but the real abuses and injustices they are defending.

It proceeds:

For this reason we are delighted to notice the emphasis laid by the Independent Review on the necessity of land reform, a subject which occupies two articles in the January number of that periodical. The first article, presumably from the pen of the editor, destroys in a terse and luminous retrospect the historical defenses for land monopoly; the second, written by Mr. Charles Trevelyan, sets out some of the arguments for the taxation of land values. Our own strong opinions in favor of treating this question as one of immediate urgency have been expressed often enough in these columns.

The Speaker urges the Liberal party to grapple fearlessly with the land problem, and says "the case for action is unusually strong."

Mr. Chamberlain proposes to increase the price of food without relieving at all the pressure of rent, and if the Liberal party can not offer the country some real measure of reform its place in the scheme of progress is forfeited. We hope, then, that there will be no hesitation in the Liberal party about grappling with this problem in its various aspects, for the land question is just as important in the country as in the town.

The SPEAKER. The time of the gentleman has expired.

Mr. BAKER. I ask unanimous consent to extend my remarks in the Record.

The SPEAKER. The gentleman from New York asks unanimous consent to extend his remarks in the Record. Is there objection? [After a pause.] The Chair hears none.

Mr. STEPHENS of Texas. Mr. Speaker, I desire to offer an amendment to one section of the bill.

Mr. BURKE. I do not think it would be in order to offer an amendment. I cannot accept it.

The SPEAKER. The gentleman is entitled to an hour, and after the expiration of that time the bill is open to amendment, unless the previous question operates.

Mr. BURKE. Well, I do not yield to an amendment, Mr. Speaker.

Mr. STEPHENS of Texas. I will say to the gentleman that I am in favor of the bill. I believe it is correct in its policy. I believe that these reservations should be opened up, but I do not believe in the provision of the bill that provides that after the four years' time has elapsed that the remaining portion of the unsold land should be sold in unlimited quantities under such rules and regulations as the Secretary of the Interior may prescribe. I desire to offer an amendment providing that the amount sold to any one man shall not exceed 640 acres. I would limit it to 160 acres if it were agricultural land, but I presume all the agricultural land will have been taken within the four years and that there will be no agricultural land to be taken up.

Mr. BURKE. Does the gentleman want to limit the amount to 640 acres?

Mr. STEPHENS of Texas. Yes; to 640 acres.

Mr. BURKE. Is that all that the amendment provides?

Mr. STEPHENS of Texas. That is all that part of the amendment provides.

Mr. BURKE. I do not object to that.

Mr. STEPHENS of Texas. There is another amendment which I think should be made to this bill. If there were valuable minerals in this land the minerals should not pass with the land and be subject to entry. I believe

that the miners are entitled to as much consideration as the homesteader.

Mr. BURKE. There is a general law that protects that.

Mr. BAKER. I desire to offer an amendment.

The SPEAKER. The Chair will again state to the gentleman from South Dakota that he is recognized for an hour.

Mr. BURKE. I understand that, Mr. Speaker.

The SPEAKER. And that the bill is subject to amendment unless the gentleman at the end of that time asks the previous question.

Mr. BURKE. I stated that I had no objection to the amendment offered by the gentleman from Texas, to limit it as he states, and after the disposition of that I shall ask for the previous question upon the bill and amendments to its passage.

The SPEAKER. The Chair will state to the gentleman from South Dakota that the Chair understands the rule to be this: In the hour that the gentleman controls the bill is not subject to amendment, and that so far the amendments have been read for information. Now, if the gentleman yields the floor the bill will be subject to amendment.

Mr. BURKE. I am not yielding the floor, Mr. Speaker, and I ask for the previous question.

The SPEAKER. The previous question is asked for.

Mr. BAKER. I shall object, Mr. Speaker, unless I can have an opportunity to offer my amendment.

Mr. BURKE. I ask that the bill be amended as suggested by the gentleman from Texas.

Mr. BAKER. Mr. Speaker, I object.

The SPEAKER. The gentleman from South Dakota asks unanimous consent—

Mr. BAKER. I object, Mr. Speaker, unless I can have an opportunity to offer my amendment. You can vote my amendment down in a second.

Mr. BURKE. Do I understand that the amendments of the committee are now considered as pending?

The SPEAKER. The amendments reported from the committee are pending. The gentleman from South Dakota can offer an amendment if he sees proper, and then call the previous question. He can test the sense of the House at any time he desires.

Mr. BURKE. Mr. Speaker, I offer the following amendment:

The SPEAKER. The Clerk will report it.

The Clerk read as follows:

After the word "interior," in line 12, page 10 of the bill, insert the words "not more than 640 acres to any one purchaser."

Mr. STEPHENS of Texas. That covers the ground of my amendment.

On motion of Mr. Burke, the previous question was ordered.

The question was taken on the amendment and the amendment was agreed to.

Mr. BAKER. Mr. Speaker, a parliamentary inquiry. Do I understand I can not now offer an amendment?

The SPEAKER. The previous question is now operating.

Mr. FINLEY. Mr. Speaker—

The SPEAKER. For what purpose does the gentleman rise?

Mr. FINLEY. Merely for a matter of information. I wish to call the attention of the gentleman from South Dakota to his proposition to amend the amount of appropriation by reducing it from \$9,000 to \$75,000.

Mr. BURKE. I am going to offer that at the proper time. I move to amend, Mr. Speaker, in section 5, in line 10, to strike out the word "ninety" and insert "seventy-five."

The SPEAKER. Is there objection?

Mr. BAKER. I object.

The SPEAKER. Objection is made. The question is on the engrossment and third reading of the bill.

Mr. FINLEY. I move to recommit the bill with instruction to report back a reduced appropriation from \$90,000 to \$75,000, in line 10, page 11.

The SPEAKER. The gentleman from South Carolina moves to recommit the bill with instructions to the committee to report the same back immediately with an amendment, striking out the word "ninety" and inserting the word "seventy-five" in line 10, page 11; so as to make the appropriation \$75,000 instead of \$90,000.

Mr. BURKE. Mr. Speaker, a parliamentary inquiry. What will be the status of the bill if the gentleman's motion prevails?

The SPEAKER. It will have to be reported back by the committee forthwith if this motion is adopted.

The question was taken; and the motion was agreed to.

Mr. BURKE. Mr. Speaker, I report back the bill H.R. 10418 with an amendment, in accordance with the direction of the House.

Mr. BAKER. A parliamentary inquiry. Has the committee had a meeting?

Mr. BURKE. I now ask the previous question on the bill and the amendments to its passage.

Mr. BAKER. You can not—

The SPEAKER. One moment. The Chair is informed, and his recollection without the information concurs

with the information, that this is the usual proceeding and that there are precedents. The Clerk will read section 1022 of Hinds's Parliamentary Practice.

The Clerk read as follows:

Sec. 1022. A bill may be recommitted with instructions that it be reported back forthwith, and this report may be made at once by the chairman of the committee and is not subject to the point that it must be considered in the Committee of the Whole if it has previously been considered there.

Mr. BURKE. Mr. Speaker, I now ask the previous question on the passage of the bill and the amendments.

Mr. BAKER. A parliamentary inquiry, Mr. Speaker. Do I understand that under the rules it is not necessary for the committee to meet when the bill was recommitted?

The SPEAKER. Such has been the practice with such instructions.

Mr. BAKER. All right; I want to get that clear. Now I ask unanimous consent to offer an amendment. The fate of that amendment is known. Probably there will not be another vote for it in this House.

The SPEAKER. The gentleman from New York asks unanimous consent to offer an amendment. Is there objection?

Mr. MARTIN. I object.

The SPEAKER. Objection is made. The question now is on the engrossment and third reading of the bill.

The question was taken; and on a division (demanded by Mr. Baker) the ayes were 110 and the noes 1.

Mr. BAKER. Mr. Speaker. I make the point of no quorum.

The SPEAKER. The gentleman from New York makes the point of no quorum.

Mr. BURKE. Mr. Speaker, I ask unanimous consent that the gentleman from New York may be permitted to offer his amendment. [Laughter.]

Mr. BAKER. I withdraw my point of no quorum, Mr. Speaker.

The SPEAKER. The gentleman from South Dakota asks unanimous consent that the gentleman from New York may offer an amendment.

Mr. MACON. I object.

Mr. BAKER. I raise the point of no quorum, Mr. Speaker.

Mr. PAYNE. Evidently, Mr. Speaker, there is no quorum, and we can vote on this Monday morning to accommodate my friend from New York. I move that the House do now adjourn.

The SPEAKER. Pending that, the Chair will submit the following personal request:

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. Badger indefinitely, on account of important business.

ADJOURNMENT.

The motion of Mr. PAYNE is then agreed to.

Accordingly (at 3 o'clock and 45 minutes p.m.) the House adjourned until Monday next at 12 o'clock noon.

[38 Cong. Rec. 1467 (1904)]

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. Browning, its Chief Clerk, announced that the House had passed the following bills:

* * *

A bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians, of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect;

[38 Cong. Rec. 1468 (1904)]

HOUSE BILLS REFERRED.

The bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect, was read twice by its title, and referred to the Committee on Indian Affairs.

[38 Cong. Rec. 1469 (1904)]

SIOUX TRIBE OF INDIANS,
SOUTH DAKOTA.

The SPEAKER. The gentleman demands the regular order. The regular order is the motion for the previous

question demanded by the gentleman from South Dakota.

The previous question was ordered.

The SPEAKER. The question now is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, read the third time, and passed.

[38 Cong. Rec. 1601 (1904)]

REPORTS OF COMMITTEES.

* * *

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect reported it without amendment, and submitted a report thereon.

[38 Cong. Rec. 4984-4988 (1904)]

ROSEBUD RESERVATION LANDS.

Mr. GAMBLE. Will the Senator from Iowa yield to me that I may move to proceed to the consideration of House bill 10418?

Mr. ALLISON. I understand that these are House bills—there are three or four of them—and that they

will not give rise to any further debate or, at least, not to any extended debate. I yield, therefore, to the Senator from South Dakota.

Mr. GAMBLE. I move that the Senate proceed to the consideration of the bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill, which was read.

Mr. HALE. Mr. President, is there a report in this case?

Mr. GAMBLE. There is a report, but it is quite lengthy.

Mr. HALE. Let the report be read, Mr. President.

* * *

ROSEBUD RESERVATION LANDS.

Mr. CULLOM. If there is nothing pending before the Senate, I should like to call up a bill.

The PRESIDENT pro tempore. There is a bill now pending.

Mr. CULLOM. I did not know that.

Mr. TELLER. What is the pending bill?

The PRESIDENT pro tempore. The bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect, is before the Senate as in Committee of the Whole. The reading of the report has been called for, and it will now be read.

The Secretary read the report submitted by Mr. Gamble on February 4, 1904, as follows:

The Committee on Indian Affairs, to whom was referred the bill (H.R. 10418) ratifying and amending an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making an appropriation and provision to carry the same into effect, having had the same under advisement, make the following report and recommend that the bill do pass.

The bill in question was very fully and carefully considered by the Committee on Indian Affairs in the House, and an extended report recommending its passage was submitted thereon. The present bill is substantially the same as H.R. 50, upon which the report of the Department is based. It was modified to conform to the recommendations of the Department and reintroduced as H.R. 10418.

The subject matter of the measure is so fully covered by the House report thereon, the substance thereof is hereby adopted and made a part of this report.

[From House Report No. 443, Fifty-eighth Congress, second session]

The purpose of this bill is to ratify and amend an agreement made with the Rosebud Indians in South Dakota by Inspector James McLaughlin, dated September 14, 1901, providing for the cession to the United States of the unallotted portion of their lands in Gregory County, S. Dak., and opening the same to settlement and entry under the homestead and town-site laws.

The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There are 452 Indians holding allotments in the county, aggregating 104,999 acres.

The agreement, as made with the Indians, provided that the United States should pay for the land at the rate of \$2.50 per acre, and from the proceeds \$250,000 was to be expended in the purchase of stock cattle for the benefit of the Indians, and the balance was to be paid per capita in cash, in five annual installments. A bill for the ratification of this treaty and opening the land to settlement was transmitted by the Secretary of the Interior to Congress in the first session of the Fifty-seventh Congress. This bill provided simply for a ratification of the treaty and that the lands were to be disposed of under the provisions of the homestead law at \$2.50 per acre.

The bill was reported by this committee and was also favorably reported by the Committee on Indian Affairs in the Senate and passed the Senate. It appearing that the House was opposed to the passage of the same, a new bill was presented late in the second session of the Fifty-seventh Congress, substantially the same as the present bill not under consideration, which was favorably reported by this committee, but too late in the session to have consideration in the House.

Both of these bills present a new idea in acquiring Indian lands, and if this bill should be enacted into law it will establish a new policy and be a departure from the policy that has long since prevailed in acquiring Indian lands, as heretofore it has been the practice and policy of the Government to purchase lands from the Indians and pay them therefor and then open the same to entry and settlement, and if not immediately,

ultimately, under the provisions of what is known as the "free-homestead act."

This bill provides that the lands shall be disposed of under the homestead laws by the settler paying therefor and the proceeds paid to the Indians, and it is expressly provided by section 6 of this bill that the United States shall in no manner be bound to purchase any portion of the land except the school sections, or to dispose of the same except as provided, or to guarantee to find purchasers for said lands, it expressly stating that the intention of the act is that the United States shall act as trustee for the Indians in disposing of the lands and pay over the proceeds from the sale thereof only as the same are received.

The provision that \$250,000 of the amount received shall be expended for purchase of stock cattle is in accordance with the original treaty and is considered a wise provision, as it will be better for the Indians than to pay them entirely in cash, and thus enable them to better become self-supporting.

The bill further provides that not more than \$150,000 in cash shall be paid to the Indians in any one year, which is also substantially the same as the treaty provides. Section 4 of the bill provides that sections 16 and 36, or the equivalent of two sections in every township, shall be ceded to the State of South Dakota for school purposes and paid for by the United States at \$2.50 per acre, and section 5 provides for an appropriation of \$90,000 for this purpose. This is in conformity with the guaranty given to the State of South Dakota by Congress in the enabling act, which provides that in any reservation opened to settlement subsequent to the admission of the State into the Union sections 16 and 36 would be reserved and ceded to the State for school purposes.

The provision of the bill for payment for the land by settlers in installments is deemed a wise one, as it will make it easy for the settler to pay for the land and will also provide a fund to pay the Indians an annual per capita cash payment.

The price of the land is fixed by the bill at \$3 per acre for all that is entered during the first six months after the same shall be opened to settlement and entry, and the price thereafter to be \$2.50 per acre, with a provision that at the expiration of four years from the taking effect of this act all lands remaining undisposed of shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior.

There is no question but what the Indians have no use for the land that is proposed to be ceded by this bill; that the tract is only a very small portion of the Rosebud Reservation, and is really only a corner of the reservation, which will be left compact and in a square tract and a reservation about equal in size to the Pine Ridge Reservation, in South Dakota.

That in disposing of it the said Rosebud Indians will receive a per capita payment of \$30.50 each year for a period of five years, aggregating \$152.50 to each man, woman, and child, and it is thought that this payment and the matured increase that will be marketable from the stock cattle that will be given to the Indians under the terms of this bill will put them in a condition much more self-supporting than they are at present and relieve the Government from the responsibility and expense of caring for them.

Inspector McLaughlin, who negotiated the treaty with these Indians, in one of the councils said:

"The census rolls show 4,917 persons belong to this agency, which would give an annual per capita

allowance of \$30.50; that is, \$30.50 once a year to each man, woman, and child for a period of five years, aggregating \$152.50 that each man, woman, and child would receive in the five years.

"At the expiration of five years, when this per capita payment would end, the matured increase derived from your stock cattle would then be marketable and continue to furnish a large number of beef cattle annually thereafter which would place you upon an independent footing, and with proper care of your cattle would insure you a regular annual income. * * * Then the stock cattle, which, if properly cared for, will bring about a great deal of prosperity among you people. And in the third place, the cash payment for five years, which would enable you to take care of your families without any suffering until you begin to receive returns from the marketable cattle, the increase of the cattle that will be issued to you."

The passage of this bill will open for settlement 416,000 acres of land, which will be settled upon, cultivated, and improved, and turned into actual homes. This will enhance very materially the value of the 452 Indian allotments which are within the area proposed to be ceded, and it will also bring the Indians into contact with their white brothers, and give them the benefit of learning how to farm and raise stock from actual observation, and it will tend to make them more self-supporting, and be a great improvement upon their present condition, many of them being dependent upon the bounty of the Government, and the sooner Indian reservations are broken up and the Indians required to take their allotments and their surplus lands opened to settlement, the better it will be for the advancement and higher civilization of the Indian.

The principal question that the committee has had to determine in relation to this bill is whether or not Congress has the right, and whether it should legislate to dispose of Indian lands without the consent of the Indians, and whether it would be proper to pass this bill without providing for submitting it to the Indians for their ratification and approval, in accordance with existing treaty stipulations. As to the power of Congress to so legislate there can be no question. That Congress has heretofore so legislated is established by the passage of a bill ratifying and amending a treaty with the Kiowa, Comanche, and Apache tribes of Indians in Oklahoma; the bill ratifying and amending said treaty was reported from this committee in the first session Fifty-sixth Congress (see H.R. 342, 56th Cong., 1st sess.), and the principal objection urged against the ratification of the treaty in that case was that it was not signed by three-fourths of the adult male Indians of the tribe, as provided by existing treaty stipulations.

The bill, however, was enacted into law, and subsequently the validity of the law and the right of Congress to legislate without the consent of the Indians was decided by the Supreme Court of the United States in the case of *Lone Wolfe v. Hitchcock*, January 5, 1903 (187 U.S. p. 553), and in this connection attention is called to the report upon H.R. 50, made by the Commissioner of Indian Affairs, under date of January 9, 1904, which report, with a letter of the Secretary of the Interior, is herewith submitted, and the full decision in said case is also herewith appended.

While the committee recognized the right of Congress to legislate without consent of the Indians, it is not prepared to say that it should do so in all cases, and only where after mature consideration it appears that the Indians will be benefited thereby, and that the circumstances justify such legislation.

In this instance, there is a treaty executed strictly as provided by former treaty stipulations, more than three-fourths of the male adult Indians having signed the same. Furthermore, as appears by the report of the Commissioner of Indian Affairs, a treaty containing substantially the provisions of this bill except that it only provided to pay the Indians \$2.75 per acre for their land, was submitted to the Rosebud Indians by Inspector McLaughlin in August last, and forty-eight more than a majority of said Indians signed the same. It appearing, therefore, that more than three-fourths of the male adult Indians signed the original treaty, that more than a majority were willing to sell at a less price than provided in this bill, and the fact that the Department recommends the passage of the measure, provided the Indians can be insured of a lump sum equal to \$1,040,000, the amount mentioned in the original treaty, and the committee having fixed a price that it is believed will more than insure this amount, it is thought wise and no hardship or even injustice to the Indians to have such a measure passed, and for that reason recommend the passage of the bill.

Upon the general question as to the policy of legislating for the Indians without consulting them or entering into any treaty whatever, attention is called to the report of the Commissioner of Indian Affairs, herewith submitted, and also to the testimony of the Commissioner before the committee, upon this point, as follows:

"If you depend upon the consent of the Indians as to the disposition of the lands where they have the fee to the land, you will have difficulty in getting it, and I think the decision in the *Lone Wolf* case, that Congress can do as it sees fit with the property of the Indians, will enable you to dispose of that land without the

consent of the Indians. If you wait for their consent in these matters it will be fifty years before you can do away with the reservations. You know, and Mr. Curtis especially knows, that the most intelligent tribe in the Indian Territory are the Cherokees; they are practically white, yet they were the last to consent to the distribution of their land, and did not so until the Curtis Act compelled them to consent to it, so that no matter to what stage of intelligence or growth or civilization an Indian tribe has attained it does not necessarily follow that you will get their consent.

"Take the case of the New York Indians, which you had before you in the last Congress, and which, I assume, will come up again this year. If you depend upon the consent of those Indians to separate their lands and distribute their funds, it will be fifty years before you get it. The public policy, the policy of the Government, is against segregating and setting aside large tracts of land for the benefit of the Indians, which simply becomes festers on the surface of the country in which they are located. I believe in dealing fairly with the Indian. Give him what is absolutely his. Give him 80 or 180 acres, or if it is necessary, give him two or three hundred acres of grazing land, on which he can make a living under the conditions existing in the State where it is located. If the Indian has the right to the land, then I think you should set aside what funds are derived from it and pay them out gradually to him and not in a lump sum. I know I am running counter to the traditions of the office of my superiors in this, but hereafter, when asked to make any report on these bills, I shall report in favor of Congress taking the property of the Indians without their consent.

"Mr. Burke. Would you make that statement general, or would you except reservations where there may be

in existence treaty relations that provide directly to the contrary? For instance, do you know there is in existence among the Sioux—I think in the treaty of 1868—a provision that the Indians will not be deprived of their lands without the consent of three-fourths, and that provision was reenacted, I think, in the treaty of 1889.

"Commissioner Jones. I will go to the extreme. I do not think I would ask the consent of the Indians in that case. Supposing you were the guardian or ward of a child 8 or 10 years of age, would you ask the consent of the child as to the investment of its funds? No; you would not, and I do not think it a good business principle in this case."

The price of the land, as provided in the bill, will not only insure the amount for which the Indians agreed to sell, but in the opinion of the committee is a fair and just price for the same, and in view of all the circumstances the passage of the bill is recommended.

Letters from the Secretary of the Interior, transmitting the treaty to the Senate, together with the letter from the Commissioner of Indian Affairs in relation to same, dated November 23, 1901, are herewith appended.

Department of the Interior.
Washington, January 12, 1904.

Sir: I have the honor to acknowledge the receipt of your communication of the 15th ultimo, inclosing for report the bill (Hr. 50) introduced by Mr. Burke, of South Dakota, "to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation,

in South Dakota, and making appropriation and provision to carry the same into effect."

In reply, I transmit herewith a copy of a report on the matter by the Commissioner of Indian Affairs, dated the 9th instant, in which, after discussing the provisions of the bill, and referring at some length to the unsuccessful efforts of the Department to secure a new agreement with the Indians for the cession of the lands in question along the lines proposed in S. 7390 of the last session of the Fifty-seventh Congress (which bill failed of passage), the Commissioner suggests that the bill H.R. 50 should be so amended as to insure to the Indians an average price of not less than \$2.50 per acre for the lands ceded by them; also that the provision in the bill authorizing the Secretary of the Interior, in his discretion, to grant extensions of time to settlers within which to make their payments (line 25, p. 7, and lines 1, 2, and 3, p. 8) should be entirely eliminated.

I have the honor to especially invite the attention of the committee to the remarks of the Commissioner on these points, which are fully concurred in by me.

No objection will be offered to H.R. 50 if modified and amended as suggested.

Very respectfully,

E. A. Hitchcock, *Secretary*.

The Chairman of the Committee on Indian Affairs.
House of Representatives.

Department of the Interior,
Office of Indian Affairs,
Washington, January 9, 1904.

Sir: The office has the honor to acknowledge receipt, by reference from the Acting Secretary of the Interior,

for report, of a letter dated December 15, 1903, from Hon. J. S. Sherman, chairman of the House Committee on Indian Affairs, with which he transmits a copy of H.R. 50, Fifty-eighth Congress, first session, providing for the ratification and amendment of the agreement with the Rosebud Indians in South Dakota, upon which he states he would like to have a report from the Department.

Reporting upon this bill, the Office deems it proper at the very outset to invite attention to the fact that the same proposes to open the surplus lands of the Rosebud Indians, situated in Gregory County, for public settlement and dispose of the same without the consent of the Indians to the terms thereof.

The bill has been compared with and found to be similar to S. 7390, Fifty-seventh Congress, second session, upon which the Office made a report under date of February 25, 1903, with the exception that the fifth section of said S. 7390, which provided that the agreement is amended should take effect only upon acceptance thereof and consent thereto by the Rosebud Indians, is omitted in said H.R. 50.

The essential features of the bill now in hand, aside from the omission of the provision that the same shall be effective only when accepted by the Indians, are as follows:

(1) Instead of paying the Indians a lump sum of \$1,040,000 for the surplus Gregory County lands, as provided in the agreement of September 14, 1901, it is proposed to dispose of the lands to settlers under the provisions of the homestead and town-site laws, excepting sections 16 and 36, or the equivalent thereof, at not less than \$2.50 per acre, the proceeds arising from such sale to be paid to the Indians in the manner provided for in said agreement.

(2) Sections 16 and 36 in each township, or their equivalent, are to be reserved for the use of the common schools of South Dakota and are to be paid for by the United States at the rate of \$2.50 per acre. The selections are to be made prior to the opening of the lands to settlement.

(3) Of the proceeds arising from the sale of the lands ceded, the sum of \$250,000 is to be expended in the purchase of stock cattle, which are to be issued to the Indians as equally as possible, it being provided, however, that not more than half the money received in any one year shall be thus expended. The other half is to be paid to the Indians per capita in cash. The payments are to be paid in the month of December of each year until all the lands are fully paid for and the funds disbursed among the Indians.

(4) The homestead settlers entering said lands are to pay for the same at the rate of \$2.50 per acre, of which money 50 cents per acre is to be paid at the time of entry and 50 cents per year during the next four years until the total amount is paid up. If the entryman fails to make any of the payments within the right time required, it is provided that all of his rights shall cease and his entry shall be held for cancellation, unless the Secretary of the Interior excuses the failure to pay after good cause is shown.

(5) All the lands remaining undisposed of to homestead settlers at the expiration of four years are to be sold at public auction, to the highest bidder for cash, under regulations to be prescribed by the Secretary of the Interior, in tracts not exceeding 160 acres to any one person, at not less than \$2.50 per acre.

(6) The last section of the bill stipulates that the United States shall act only as trustee for said Indians in disposing of the lands and in expending and paying

over the proceeds derived from their sale, and that the Government shall not be bound in any manner to purchase any of said lands, excepting sections 16 and 36, or to dispose of the same otherwise than as proposed in the bill, or to guarantee to find purchasers for the same, or for any portion thereof.

The propositions of the bill as above set forth, it will be noted, differ most materially from the provisions contained in the agreement of September 14, 1901, which stipulated for the purchase of the land ceded by the United States for the lump consideration of \$1,040,000. Senate bill No. 7390, Fifty-seventh Congress, second session, already referred to, was similar to the bill now in hand with the exception, as indicated above, that section 5, which provided for the acceptance and consent of the Indians to the terms proposed, is now eliminated and stricken out. Under date of February 25, 1903, the Office reported upon said S. 7390, and stated that in view of the fact that the same contained provision for the consent of the Indians to the bill before it should become binding, the Office would interpose no objection thereto.

The bill was not, however, passed by Congress, and during the past summer, at the request of the entire South Dakota delegation in Congress, and effort was made to conclude a new agreement with the Indians of the Rosebud Reservation for the cession of the lands in question along the lines contained in said S. 7390. Draft of instructions for the guidance of the United States Indian inspector, James McLaughlin, in the conduct of negotiations for such agreement were prepared by this office, dated June 30, 1903, and approved by the Department July 3, 1903.

Under date of August 31, 1903, Inspector McLaughlin reported his failure to conclude an agree-

ment with the Indians on the terms proposed. His negotiations with the Indians and his journey over the reservation for the purpose of securing signatures from the Indians cover a period of about six weeks, as shown by his report. He stated that the Indians were unanimous in refusing to assent to the bill as presented to them, the main opposition, as shown by the proceedings of the several councils, being based upon the statements that the lands in question are worth more per acre than the amount proposed to be paid to them therefor. After making some material modifications in the terms of the agreement, which would result in the procurement for the Indians of a larger price for their lands, the inspector succeeded in getting a majority of the signatures of the 125 Indians present at the council. The additional signatures were obtained by visits to the several camps until a total of 737 signatures had been procured. While this was 48 more than half the male adult Indians of the reservation, it still lacked 296 of the required three-fourths majority.

One of the modifications made by the inspector in the agreement as signed was that settlers on the lands entered as homesteads should pay therefor at the rate of \$2.75 per acre instead of \$2.50, as proposed in the bill. The amount which the Government was to pay, however, for sections 16 and 36 was left at \$2.50 per acre, as in the original bill. This the inspector considered to be just and equitable, for the reason that the school lands would be paid for by direct appropriations of Congress and would be immediately available upon the ratification of the agreement, whereas the homestead tracts would be paid for in six installments running for a period of five years.

Another modification made was to the effect that the lands remaining undisposed of to homestead settlers

at the expiration of four years should be disposed of at public auction in tracts not exceeding 160 acres, without restriction as to the number of tracts that might be purchased by any one bidder. This modification the inspector thought would result in the sale of some of the rougher and less desirable tracts to ranchmen as ranger, whereas they would not be bought by individual purchasers in 160-acre tracts.

A careful reading of the council proceedings, which were quite prolonged, and full transcripts of which the inspector transmitted with his report, discloses the fact that the main objection of the Indians to the proposition submitted was that the price to be received by them for their lands was inadequate and that it would not even guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, and with the additional uncertainty that the payments by the settlers might not be made at all.

When the agreement of September 14, 1901, was being concluded the Indians argued with great persistency that their lands were worth more than \$2.50 per acre, and they were almost unanimous in declaring that they were well worth \$5 per acre. Since that time several petitions have been received from the Rosebud Indians earnestly protesting against the ratification of said agreement because of the inadequacy of the compensation. Letters from outside and apparently disinterested parties were also received indicating that the lands were worth a considerably larger price than that agreed to be paid. In fact, one offer was made by parties to take all the lands covered by the cession at the rate of \$5 per acre. On this point the Office seems warranted in saying that from the best information it has been able to obtain a considerable portion of these

lands is worth perhaps two or three times the amount proposed to be charged to homestead settlers therefor, and that no doubt the entire tract taken as a whole, exclusive of the allotments, is worth considerable more than \$2.50 per acre.

The Indians can not see, as indicated in their talks and councils and as reported by Inspector McLaughlin, why they should not procure such price for the lands as settlers are willing to pay for them. The Indians in their talks have shown themselves to be not unreasonable in their demands, but simply persisted in demanding what they believed to be just and proper. In fact many of the Indians during the councils last summer indicated that if the propositions under consideration would guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, that they would not oppose the same. They felt, however, that there was no certainty that they would realize even \$2.50 per acre for the lands proposed to be ceded.

The proposition now made, as contained in said H.R. 50, evidently rests on the assumption that the consent of the Indians to the session of the lands in question on proper terms can not be procured; and that therefore the lands must be disposed of, if at all, without the consent of the Indians. There is no doubt but that such action by Congress is warranted under the decision of the Supreme Court in the case of *Lone Wolf v. Hitchcock*, handed down on January 5, 1903 (187 U.S., p. 553).

So far as the treaty relations of the Indians with the United States are concerned, the status of the Rosebud Indians is almost identically similar to that of the Kiowas, Comanches, and Apaches, whose treaty was under consideration in the *Lone Wolf* decision. Article

12 of the treaty of April 20, 1868, with the Sioux tribe of Indians (15 Stats., p. 635), contains the following provision:

"No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same," etc.

Although the Kiowa Indians had entered into treaty stipulations with the United States similar to the foregoing, the court, in the *Lone Wolf* case, held that the contention that the Indians could not be divested of their tribal property without their consent was untenable, and that the power of Congress to abrogate the provisions of an Indian treaty had always existed. The Court said:

"To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency, when the necessity might be urgent for a partition and disposal of the tribal lands of all power to act if the assent of the Indians could not be obtained."

It was further held that plenary authority over the tribal relations of the Indians had always been exercised by Congress, and that the power to do so has always been deemed a political one, not subject to be controlled by the Judicial Department of the Government. This power, in the opinion of the court, is a necessary one from the very nature of the relation sustained by the Government toward the Indians and its duty to protect its wards in all their relations.

Respecting the exercise of its power in dealing with the property and other interests of the Indians, the court said:

"The power exists to abrogate the provisions of an Indian treaty though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians, it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians."

Whether or not the case in hand respecting the Rosebud Indians is such as to justify Congress in disregarding the treaty stipulations, and in opening up and disposing of the lands without the consent of the Indians is one that must be left to the judgment and wisdom of Congress to determine.

As a general proposition the Office has to say that after careful and mature consideration it is of the opinion that the time has come when Congress and the Indian Department are warranted in administering the tribal interests of the Indians in the United States, including the matter of disposing of such of their lands as they do not need and do not use, without consulting the Indians affected in reference thereto.

It must be assumed, of course, in the adoption of any such policy that those charged with the duty of administering the affairs of the Indians will act in every instance in perfect good faith and will see that the rights and interests of the Indians are fully preserved

and enforced. If, therefore, the bill in hand is to be enacted into law, it is respectfully submitted that the same should be so amended as to insure the procurement to the Indians of an average price of at least \$2.50 per acre for all the lands in question.

The Office is convinced not only that the lands in question are well worth the price indicated as a whole, but that the bill as it now stands will not secure for the Indians the price named. Necessarily a considerable portion of the lands will not be disposed of under any conditions at \$2.50 per acre. In order, therefore, to procure this price for the whole, the better lands must be sold for more than the price fixed in the bill.

Another feature of the bill which the Office is positively of the opinion should be changed is that contained in line 25, page 7, authorizing the Secretary of the Interior, in his discretion, to grant an extension of time to the settler for good cause within which to make his payments. This provision, or any provision authorizing the extension of time to the settler, should be entirely eliminated and omitted, and the Office so recommends.

From ample experience gained in similar provisions in the past the Office feels justified in stating that if the privilege of deferring payments is extended to settlers for any cause, that requests for such extension will be made and multiplied by them until it will become next to impossible to secure payment at all. If the plan of disposing of the Indian lands now proposed is to be adopted, it is respectfully submitted that good faith toward the Indians requires that the payments of the settler shall be absolutely and promptly made, and that there shall be no default whatever. If this be not insisted upon at all times and in every case by Congress and the Indian Department, then there can be no

assurance that the Indians will receive for their lands the sum intended to be procured for them and the amount that will be necessary in order to bring them adequate compensation for their lands.

With the modifications and amendments to the bill as above recommended, the Office is of the opinion that the interests of the Indians will be fully conserved and that reasonable compensation will be secured for them for their lands. If so amended, therefore, the Office will interpose no objection to its enactment into law.

The letter of Mr. Sherman and the accompanying bill are herewith returned and a copy of Office report is enclosed.

Very respectfully,

W. A. Jones, *Commissioner.*

The Secretary of the Interior.

Department of the Interior,
Washington, December 6, 1901.

Sir: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated the 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and

reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully,

E.A. HITCHCOCK
Secretary.

The President pro tempore United States Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,

Washington, November 23, 1901.

Sir: The Office has the honor to acknowledge the receipt of a letter, dated October 11, 1901 from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement, dated September 14, 1901, with the Indians of the Rosebud Reservation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the Office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to that end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the

lands opened up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The Office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 19, 1901, a draft of instructions was prepared by this Office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the Department on March 21, 1901, and Inspector McLaughlin was detailed for the duty of conducting negotiations.

In his report, dated October 5, 1901, the inspector states that he arrived at the Rosebud Agency on April 2, 1901, for the purpose of entering upon negotiations with the Indians, and that upon his arrival it was ascertained that smallpox was prevalent on the reservation, wherefore he deemed it unadvisable to assemble the Indians in general council. He states, however, that he made a trip to the Ponca Creek district, which is in Gregory County, about 100 miles east of the agency, for the purpose of conferring with the Indians there who would be the most affected by the cession, and for the purpose of traveling over that portion of the reserve

and securing a knowledge of the lands whose cession it was proposed to secure.

Negotiations having been postponed at that time, with the approval of the Department, the inspector states that he proceeded to carry out orders elsewhere, and returned to the Rosebud Agency on August 28 last and at once entered upon negotiations which, though somewhat protracted and at times discouraging, he says have been satisfactorily concluded.

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 73 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existent statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated September 14, 1901, and contains the signatures of James McLaughlin, United States Indian inspector, and of 1,031 male adult Indians of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement to the effect that the provisions thereof were fully explained by them to the Indians in open council, that it was fully understood by them before signing, and that the signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Another certificate is attached to the agreement, dated October 4, 1901, by Frank Mullen, agency clerk,

and by C. H. Bennett, John Sullivan, Frank Robinson, Frank Sypal, Isaac Bettelyoun, and James A. McCorkle, farmers of the several districts of the reservation, and Louis Bordeaux, ex-farmer of the agency district, to the effect that they witnessed the signatures of United States Indian Inspector McLaughlin and of the 1,031 Indians of the Rosebud Agency to the agreement.

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three-fourths of the male adult population of the reservation.

Respecting the terms of the cession, Inspector McLaughlin states in his report that he was greatly handicapped in the beginning by the fact that most of the Indians who favored a cession at all held the lands at an enormous price—from \$7 to \$15 per acre; that only a very few expressed their willingness to accept as low as \$5 per acre, and this in cash and all in one payment; that upon his arrival all the white men connected with the agency, as well as those of the surrounding country with whom he talked, held the lands in question as worth \$5 per acre; that it appeared that adjacent lands in Gregory County and in Hoyt County, Nebr., were selling at from \$5 to \$10 per acre; that a syndicate of cattlemen in Sioux City, Iowa, expressed its willingness to pay \$5 per acre for the entire tract, and that these current rumors and fictitious values placed upon the lands which were circulated among the Indians exercised them very much and had to be overcome by reasoning, which required time and a great amount of patience.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that whilst he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased, whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached.

The inspector refers to the minutes of the council proceedings transmitted with his report as showing the numerous questions raised by the Indians and his answers to their contentions; also, as showing that he finally convinced a number of the leading men of the wisdom of cooperating with him in formulating an agreement.

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land, and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in

Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek day school, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 389.47 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years will aid the Indians materially in providing for their family needs during that time, after which the matured cattle, the increase from the stock issued to them, will be marketable and will, with proper care, give them an annual revenue thereafter.

The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indians accept such provisions, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could not be made. The Indians insisted for a long time

upon having the entire \$790,000 paid to them in cash in one payment; but the inspector says he finally succeeded in getting their consent to its payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

The inspector transmits with his report a map, prepared by Special Allotting Agent W. A. Winder, of the portion of the reservation proposed to be ceded, which shows the several Indian allotments therein, with the names of the allottees, and also the unallotted portions; also a package of correspondence had with the State authorities of South Dakota relative to the boundaries of Gregory County, and the description of the eastern portion of the reservation.

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement.

The agreement appears to be properly executed and in form for acceptance and ratification by Congress. It is deemed proper in this connection to refer especially to the provisions of article 4, which are evidently intended to fix the status of mixed-blood Indians upon that reservation and to insure the undisturbed residence thereon of white men intermarried with the Indians. It does not appear that this provision extends to mixed bloods as a class any rights or benefits that they did not have before, unless possibly to secure rights to children born of a marriage since the enactment of the

provision contained in the Indian appropriation act of June 7, 1897 (30 Stat., p. 62), which reads as follows:

"That all children born of a marriage heretofore solemnized between a white man and Indian woman by blood and not by adoption, where said Indian woman is at this time, or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior act of Congress shall be construed as to bar such child of such right."

Respecting the residence of white men intermarried with Indian women, it may be proper to state that this right has always been extended in such cases and permitted so long as the conduct of such white men on the reservation is not detrimental to the peace and welfare of the Indians. The Office sees no serious objection to the embodiment of this article in the agreement.

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this Office and from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the

amount necessary to carry the provisions of articles 2 and 3 of the agreement into effect.

The matter of the disposition of the land ceded is one properly for the Department and the Commissioner of the General Land Office to arrange. It is suggested that such disposition may be provided for by the addition of another section to the draft of the bill inclosed. In this connection it is suggested that the section added should provide for the disposition of the lands ceded "excepting such tracts as may be reserved by the President, not exceeding 398.67 acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions."

Besides the draft of the bill in duplicate, there are transmitted herewith two copies of the agreement, two copies of the council proceedings, two copies of correspondence had by Inspector McLaughlin with the state authorities of South Dakota respecting the boundaries of Gregory County, two blue prints of map, and two copies of this report, with the recommendation that one copy of each be transmitted to the Senate and House of Representative, respectively, with request for favorable action on the agreement.

The original agreement and papers accompanying the same are transmitted herewith, with the request that they be returned to the files of this Office when the same shall have served their purpose.

Very respectfully, your obedient servant,

W. A. Jones, *Commissioner.*

The Secretary of the Interior.

Mr. GAMBLE. I offer the amendments which I send to the desk.

The PRESIDENT pro tempore. The amendments will be stated.

The SECRETARY. In section 2, page 8, line 22, after the word "Spanish," it is proposed to strike out "wars" and insert "war or Philippine insurrection."

The amendment was agreed to.

The next amendment was, in section 2, page 9, line 3, after the word "lands" to insert "entered as homesteads under the provisions of this act."

The amendment was agreed to.

The next amendment was, in section 2, page 9, line 3, after the word "follows," to insert:

Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, \$4 per acre, to be paid as follows: One dollar per acre when entry is made; 75 cents per acre within two years after entry; 75 cents per acre within three years after entry; 75 cents per acre within four years after entry, and 75 cents per acre within six months after the expiration of five years after entry.

The amendment was agreed to.

The next amendment was, in section 2, page 9, line 3, before the word "upon," to insert "and."

The amendment was agreed to.

The next amendment was, in section 2, page 9, line 4, after the word "upon," to insert "after the expiration of three months and."

The amendment was agreed to.

The next amendment was, in section 2, page 9, line 23, after the word "cancellation," to insert "and the same shall be canceled."

The amendment was agreed to.

The next amendment was, in section 4, line 8 after the word "occupied," to insert "not exceeding two sections in any one township."

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

The preamble was agreed to.

[38 Cong. Rec. 5155 (1904)]

AGREEMENT WITH THE SIOUX TRIBE OF INDIANS OF THE ROSEBUD RESERVATION.

The SPEAKER also laid before the House the bill (H.R. 10418) entitled "An act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect," with Senate amendments, which were read.

Mr. BURKE. Mr. Speaker, I move that the House concur in the Senate amendments.

Mr. BAKER. Mr. Speaker—

The SPEAKER. For what purpose does the gentleman rise?

Mr. BAKER. Just to ascertain, Mr. Speaker, what is the general effect of these amendments.

The SPEAKER. Does the gentleman from South Dakota yield to the gentleman from New York?

Mr. BURKE. For a question.

Mr. BAKER. I would like to ask the gentleman to explain the general effect of these amendments.

Mr. BURKE. I would state, Mr. Speaker, that the only material change is in raising the price from \$3 an acre to \$4 an acre for a period of three months.

Mr. BAKER. And does not affect the minimum of two dollars and a half?

Mr. BURKE. Not at all.

Mr. BAKER. It raises the maximum only?

Mr. BURKE. It does not change the price at all except to raise the price for three months from \$3 to \$4.

Mr. CURTIS. And on the highest grade lands.

Mr. STEPHENS of Texas. Mr. Speaker, I would like to inquire whether this is a Senate amendment.

Mr. BURKE. This is a Senate amendment.

The question was taken and the amendments were concurred in.

[38 Cong. Rec. 5214 (1904)]

EXAMINED BY THE HOUSE

* * *

H.R. 10418. An act to ratify and amend an agreement with the Sioux tribe of the Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect;

[38 Cong. Rec. 5218 (1904)]

EXAMINED BY THE SENATE

A bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect;

[38 Cong. Rec. 5287 (1904)]

ENROLLED BILLS PRESENTED TO THE
PRESIDENT FOR HIS APPROVAL.

* * *

H.R. 10418. An act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect;

[38 Cong. Rec. 5447 (1904)]

MESSAGE FROM THE PRESIDENT
OF THE UNITED STATES.

A message from the President of the United States, by Mr. Barnes, one of his secretaries, announced that the President had approved and signed bills of the following titles:

* * *

H.R. 10418. An act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect;

[#15B]

(House of Representative Report to accompany
H.R. 10418)

[H.R. Rep. No. 443, 58th Cong. 2d Sess. 1-19 (1904)]

AGREEMENT WITH INDIANS OF ROSEBUD
RESERVATION, S. DAK.

January 21, 1904.—Committed to the Committee of the
Whole House on the state of the Union
and ordered to be printed.

Mr. BURKE, from the Committee on Indian
Affairs, submitted the following

REPORT.

[To accompany H.R. 10418.]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 10418) ratifying and amending an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making an appropriation and provision to carry the same into effect, having had the same under consideration submits the following report and recommends that the bill be amended as follows:

Section 4, line 23, strike out the word "either" and insert "any;" and in line 25 strike out the word "is" and insert "are;" and as so amended that the bill do pass.

The bill is substantially the same as H.R. 50, which was considered very fully by this committee; and the present bill is said H.R. 50, as amended, following the suggestions of the Department in accordance with the report from the Department upon said H.R. 50, which report is herewith submitted and made a part hereof.

The purpose of this bill is to ratify and amend an agreement made with the Rosebud Indians in South Dakota by Inspector James McLaughlin, dated September 14, 1901, providing for the cession to the United States of the unallotted portion of their lands in Gregory County, S. Dak., and opening the same to settlement and entry under the homestead and town-site laws.

The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There are 452 Indians holding allotments in the county aggregating 104,999 acres.

The agreement, as made with the Indians, provided that the United States should pay for the land at the rate of \$2.50 per acre, and from the proceeds \$250,000 was to be expended in the purchase of stock cattle for the benefit of the Indians, and the balance was to be paid per capita in cash in five annual installments. A bill for the ratification of this treaty and opening the land to settlement was transmitted by the Secretary of the Interior to Congress in the first session of the Fifty-seventh Congress. This bill provided simply for a ratification of the treaty and that the lands were to be disposed of under the provisions of the homestead law at \$2.50 per acre.

The bill was reported by this committee and was also favorably reported by the Committee on Indian Affairs in the Senate and passed the Senate. It appearing that the House was opposed to the passage of the same a

new bill was presented late in the second session of the Fifty-seventh Congress, substantially the same as the present bill now under consideration, which was favorably reported by this committee, but too late in the session to have consideration in the House.

Both of these bills present a new idea in acquiring Indian lands, and if this bill should be enacted into law it will establish a new policy and be a departure from the policy that has long since prevailed in acquiring Indian lands, as heretofore it has been the practice and policy of the Government to purchase lands from the Indians and pay them therefor and then open the same to entry and settlement, and if not immediately, ultimately, under the provisions of what is known as the free-homestead act.

This bill provides that the lands shall be disposed of under the homestead laws by the settler paying therefor and the proceeds paid to the Indians, and it is expressly provided by section 6 of this bill that the United States shall in no manner be bound to purchase any portion of the land except the school sections, or to dispose of the same except as provided, or to guarantee to find purchasers for said lands, it expressly stating that the intention of the act is that the United States shall act as trustee for the Indians in disposing of the lands and pay over the proceeds from the sale thereof only as the same are received.

The provision that \$250,000 of the amount received shall be expended for purchase of stock cattle is in accordance with the original treaty and is considered a wise provision, as it will be better for the Indians than to pay them entirely in cash, and thus enable them to better become self-supporting.

The bill further provides that not more than \$150,000 in cash shall be paid to the Indians in any

one year, which is also substantially the same as the treaty provides. Section 4 of the bill provides that sections 16 and 36, or the equivalent of two sections in every township, shall be ceded to the State of South Dakota for school purposes and paid for by the United States at \$2.50 per acre, and section 5 provides for an appropriation of \$90,000 for this purpose. This is in conformity with the guaranty given to the State of South Dakota by Congress in the enabling act, which provides that in any reservations opened to settlement subsequent to the admission of the State into the Union sections 16 and 36 would be reserved and ceded to the State for school purposes.

The provision of the bill for payment for the land by settlers in installments is deemed a wise one, as it will make it easy for the settler to pay for the land and will also provide a fund to pay the Indians an annual per capita cash payment.

The price of the land is fixed by the bill at \$3 per acre for all that is entered during the first six months after the same shall be opened to settlement and entry, and the price thereafter to be \$2.50 per acre, with a provision that at the expiration of four years from the taking effect of this act all lands remaining undisposed of shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior.

There is no question but what the Indians have no use for the land that is proposed to be ceded by this bill; that the tract is only a very small portion of the Rosebud Reservation, and is really only a corner of the reservation, which will be left compact and in a square tract and a reservation about equal in size to the Pine Ridge Reservation, in South Dakota.

That in disposing of it the said Rosebud Indians will receive a per capita payment of \$30.50 each year for a period of five years, aggregating \$152.50 to each man, woman, and child, and it is thought that this payment and the matured increase that will be marketable from the stock cattle that will be given to the Indians under the terms of this bill will put them in a condition much more self-supporting than they are at present and relieve the Government from the responsibility and expense of caring for them.

Inspector McLaughlin, who negotiated the treaty with these Indians, in one of the councils said:

The census rolls show 4,917 persons belonging to this agency, which would give an annual per capita allowance of \$30.50; that is, \$30.50 once a year to each man, woman, and child for a period of five years, aggregating \$152.50 that each man, woman, and child would receive in the five years.

At the expiration of five years, when this per capita payment would end, the matured increase derived from your stock cattle would then be marketable and continue to furnish a large number of beef cattle annually thereafter, which would place you upon an independent footing, and with proper care of your cattle would insure you a regular annual income. * * * Then the stock cattle, which, if properly cared for, will bring about a great deal of prosperity among you people. And in the third place, the cash payment for five years, which would enable you to take care of your families without any suffering until you begin to receive returns from the marketable cattle, the increase of the cattle that will be issued to you.

The passage of this bill will open for settlement 416,000 acres of land, which will be settled upon, cultivated, and improved, and turned into actual homes.

This will enhance very materially the value of the 452 Indian allotments which are within the area proposed to be ceded, and it will also bring the Indians into contact with their white brothers, and give them the benefit of learning how to farm and raise stock from actual observation, and it will tend to make them more self-supporting, and be a great improvement upon their present condition, many of them being dependent upon the bounty of the Government, and the sooner Indian reservations are broken up and the Indians required to take their allotments and their surplus lands opened to settlement, the better it will be for the advancement and higher civilization of the Indian.

The principal question that the committee has had to determine in relation to this bill is, whether or not Congress has the right, and whether it should legislate to dispose of Indian lands without the consent of the Indians, and whether it would be proper to pass this bill without providing for submitting it to the Indians for their ratification and approval, in accordance with existing treaty stipulations. As to the power of Congress to so legislate there can be no question. That Congress has heretofore so legislated is established by the passage of a bill ratifying and amending a treaty with the Kiowa, Comanche, and Apache tribes of Indians in Oklahoma; the bill ratifying and amending said treaty was reported from this committee in the first session, Fifty-sixth Congress (see H.R. 342, 56th Cong., 1st sess.), and the principal objection urged against the ratification of the treaty in that case was, that it was not signed by three-fourths of the adult male Indians of the tribe, as provided by existing treaty stipulations.

The bill, however, was enacted into law, and subsequently the validity of the law and the right of Congress to legislate without the consent of the Indians

was decided by the Supreme Court of the United States in the case of *Lone Wolf v. Hitchcock*, January 5, 1903 (187 U.S., p. 553), and in this connection attention is called to the report upon H.R. 50, made by the Commissioner of Indian Affairs, under date of January 9, 1904, which report, with a letter of the Secretary of the Interior, is herewith submitted, and the full decision in said case is also herewith appended.

While the committee recognizes the right of Congress to legislate without consent of the Indians, it is not prepared to say that it should do so in all cases, and only where after mature consideration it appears that the Indians will be benefited thereby, and that the circumstances justify such legislation.

In this instance there is a treaty executed strictly as provided by former treaty stipulations, more than three-fourths of the male adult Indians having signed the same. Furthermore, as appears by the report of the Commissioners of Indian Affairs, a treaty containing substantially the provisions of this bill, except that it only provided to pay the Indians \$2.75 per acre for their land, was submitted to the Rosebud Indians by Inspector McLaughlin in August last, and forty-eight more than a majority of said Indians signed the same. It appearing, therefore, that more than three-fourths of the male adult Indians signed the original treaty, that more than a majority were willing to sell at a less price than provided in this bill, and the fact that the Department recommends the passage of the measure, provided the Indians can be insured of a lump sum equal to \$1,040,000, the amount mentioned in the original treaty, and the committee having fixed a price that it is believed will more than insure this amount it is thought wise and no hardship or even injustice to the Indians to have such a measure passed, and for that reason recommend the passage of the bill.

Upon the general question as to the policy of legislating for the Indians without consulting them or entering into any treaty whatever, attention is called to the report of the Commissioner of Indian Affairs, herewith submitted, and also to the testimony of the Commissioner before the committee, upon this point, as follows:

If you depend upon the consent of the Indians as to the disposition of the lands where they have the fee to the land, you will have difficulty in getting it, and I think the decision in the Lone Wolf case, that Congress can do as it sees fit with the property of the Indians will enable you to dispose of that land without the consent of the Indians. If you wait for their consent in these matters, it will be fifty years before you can do away with the reservations. You know, and Mr. Curtis especially knows, that the most intelligent tribe in the Indian Territory are the Cherokees; they are practically white, yet they were the last to consent to it, so that no matter to what stage of intelligence or growth or civilization an Indian tribe has attained, it does not necessarily follow that you will get their consent.

Take the case of the New York Indians which you had before you in the last Congress, and which, I assume, will come up again this year. If you depend upon the consent of those Indians to separate their lands and distribute their funds it will be fifty years before you get it. The public policy, the policy of the Government, is against segregating and setting aside spots of land for the benefit of the Indians, which simply become festers on the surface of the country in which they are located. I believe in dealing fairly with the Indian. Give him what is absolutely his. Give him 80 or 160 acres, or if it is necessary, give him two

or three hundred acres of grazing land, on which he can make a living under the conditions existing in the State where it is located. If the Indian has the right to the land, then, I think, you should set aside what funds are derived from it and pay them out gradually to him and not in a lump sum. I know I am running counter to the traditions of the office of my superiors in this, but hereafter, when asked to make any report on these bills, I shall report in favor of Congress taking the property of the Indians without their consent.

Mr. Burke. Would you make that statement general or would you except reservations where there may be in existence treaty relations that provide directly to the contrary? For instance, do you know there is in existence among the Sioux—I think in the treaty of 1868—a provision that the Indians will not be deprived of their lands without the consent of three-fourths, and that provision was reenacted, I think, in the treaty of 1889.

Commissioners Jones. I will go to the extreme. I do not think I would ask the consent of the Indians in that case. Supposing you were the guardian or ward of a child 8 or 10 years of age, would you ask the consent of the child as to the investment of its funds? No; you would not, and I do not think it is a good business principle in this case.

The price of the land as provided in the bill will not only insure the amount for which the Indians agreed to sell, but in the opinion of the committee is a fair and just price for the same, and in view of all the circumstances the passage of the bill is recommended.

Letters from the Secretary of the Interior, transmitting the treaty to the Senate, together with the letter from the Commissioner of Indian Affairs in relation to same, dated November 23, 1901, are herewith appended.

Department of the Interior,
Washington, January 12, 1904.

Sir: I have the honor to acknowledge the receipt of your communication of the 15th ultimo, inclosing for report the bill H.R. 50, introduced by Mr. Burke, of South Dakota, "To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect."

In reply, I transmit herewith a copy of a report on the matter by the Commissioner of Indian Affairs, dated the 9th instant, in which after discussing the provisions of the bill, and referring at some length to the unsuccessful efforts of the Department to secure a new agreement with the Indians for the cession of the lands in question along the lines proposed in S. 7390 of the last session of the Fifty-seventh Congress (which bill failed of passage), the Commissioner suggests that the bill (H.R. 50) should be so amended as to insure to the Indians an average price of not less than \$2.50 per acre for the lands ceded by them; also that the provision in the bill authorizing the Secretary of the Interior, in his discretion, to grant extensions of time to settlers within which to make their payments (line 25, p. 7, and lines 1, 2, and 3, p. 8) should be entirely eliminated.

I have the honor to especially invite the attention of the committee to the remarks of the Commissioner on these points, which are fully concurred in by me.

No objection will be offered to H.R. 50 if modified and amended as suggested.

Very respectfully,

E.A. Hitchcock, *Secretary*.

The Chairman of the Committee on Indian
Affairs,

House of Representatives.

Department of the Interior,
Office of Indian Affairs,
Washington, January 9, 1904.

Sir: The Office has the honor to acknowledge receipt, by reference from the Acting Secretary of the Interior, for report, of a letter dated December 15, 1903, from Hon. J.S. Sherman, chairman of the House Committee on Indian Affairs, with which he transmits a copy of H.R. 50, Fifty-eighth Congress, first session, providing for the ratification and amendment of the agreement with the Rosebud Indians in South Dakota, upon which he states he would like to have a report from the Department.

Reporting upon this bill, the Office deems it proper at the very outset to invite attention to the fact that the same proposes to open the surplus lands of the Rosebud Indians, situated in Gregory County, for public settlement and dispose of the same without the consent of the Indians to the terms thereof.

The bill has been compared with and found to be similar to S. 7390, Fifty-seventh Congress, second session, upon which the office made a report under date of February 25, 1903, with the exception that the fifth section of said S. 7390, which provided that the agreement as amended should take effect only upon acceptance thereof and consent thereto by the Rosebud Indians, is omitted in said H.R. 50.

The essential features of the bill now in hand, aside from the omission of the provision that the

same shall be effective only when accepted by the Indians, are as follows:

(1) Instead of paying the Indians a lump sum of \$1,040,000 for the surplus Gregory County lands, as provided in the agreement of September 14, 1901, it is proposed to dispose of the lands to settlers under the provisions of the homestead and town-site laws, excepting sections 16 and 36, or the equivalent thereof, at not less than \$2.50 per acre, the proceeds arising from such sale to be paid to the Indians in the manner provided for in said agreement.

(2) Sections 16 and 36 in each township, or their equivalent, are to be reserved for the use of the common schools of South Dakota and are to be paid for by the United States at the rate of \$2.50 per acre. The selections are to be made prior to the opening of the lands to settlement.

(3) Of the proceeds arising from the sale of the lands ceded, the sum of \$250,000 is to be expended in the purchase of stock cattle, which are to be issued to the Indians as equally as possible, it being provided, however, that not more than half the money received in any one year shall be thus expended. The other half is to be paid to the Indians per capita in cash. The payments are to be paid in the month of December of each year until all the lands are fully paid for and the funds disbursed among the Indians.

(4) The homestead settlers entering said lands are to pay for the same at the rate of \$2.50 per acre, of which money 50 cents per acre is to be paid at the time of entry and 50 cents per year during the next four years until the total amount is paid up. If the entryman fails to make any of the payments within the right time required, it is provided that all of his rights shall cease and his

entry shall be held for cancellation, unless the Secretary of the Interior excuses the failure to pay after good cause is shown.

(5) All the lands remaining undisposed of to homestead settlers at the expiration of four years are to be sold at public auction, to the highest bidder for cash, under regulations to be prescribed by the Secretary of the Interior, in tracts not exceeding 160 acres to any one person, at not less than \$2.50 per acre.

(6) The last section of the bill stipulates that the United States shall act only as trustee for said Indians in disposing of the lands and in expending and paying over the proceeds derived from their sale, and that the Government shall not be bound in any manner to purchase any of said lands, excepting sections 16 and 36, or to dispose of the same otherwise than as proposed in the bill, or to guarantee to find purchasers for the same, or for any portion thereof.

The propositions of the bill as above set forth, it will be noted, differ most materially from the provisions contained in the agreement of September 14, 1901, which stipulated for the purchase of the lands ceded by the United States for the lump consideration of \$1,040,000. Senate bill No. 7390, Fifty-seventh Congress, second session, already referred to, was similar to the bill now in hand with the exception, as indicated above, that section 5, which provided for the acceptance and consent of the Indians to the terms proposed, is now eliminated and stricken out. Under date of February 25, 1903, the Office reported upon said S. 7390, and stated that in view of the fact that the same contained provision for the consent of the Indians to the bill before it should become binding, the Office would interpose no objection thereto.

The bill was not, however, passed by Congress, and during the past summer, at the request of the entire South Dakota delegation in Congress, an effort was made to conclude a new agreement with the Indians of the Rosebud Reservation for the cession of the lands in question along the lines contained in said S. 7390. Draft of instructions for the guidance of the United States Indian inspector, James McLaughlin, in the conduct of negotiations for such agreement were prepared by this office, dated June 30, 1903, and approved by the Department July 3, 1903.

Under date of August 31, 1903, Inspector McLaughlin reported his failure to conclude an agreement with the Indians on the terms proposed. His negotiations with the Indians and his journey over the reservation for the purpose of securing signatures from the Indians cover a period of about six weeks, as shown by his report. He stated that the Indians were unanimous in refusing to assent to the bill as presented to them, the main opposition, as shown by the proceedings of the several councils, being based upon the statements that the lands in question are worth more per acre than the amount proposed to be paid to them therefor. After making some material modifications in the terms of the agreement, which would result in the procurement for the Indians of a larger price for their lands, the inspector succeeded in getting a majority of the signatures of the 125 Indians present at the council. The additional signatures were obtained by visits to the several camps until a total of 737 signers had been procured. While this was 48 more than half the male adult Indians of the reservation, it still lacked 296 of the required three-fourths majority.

One of the modifications made by the inspector in the agreement as signed was that settlers on the lands entered as homesteads should pay therefor at the rate of \$2.75 per acre instead of \$2.50, as proposed in the bill. The amount which the Government was to pay, however, for sections 16 and 36 was left at \$2.50 per acre, as in the original bill. This the inspector considered to be just and equitable, for the reason that the school lands would be paid for by direct appropriation of Congress and would be immediately available upon the ratification of the agreement, whereas the homestead tracts would be paid for in six installments running for a period of five years.

Another modification made was to the effect that the lands remaining undisposed of to homestead settlers at the expiration of four years should be disposed of at public auction in tracts not exceeding 160 acres, without restriction as to the number of tracts that might be purchased by any one bidder. This modification the inspector thought would result in the sale of some of the rougher and less desirable tracts to ranchmen as ranges, whereas they would not be bought by individual purchasers in 160-acre tracts.

A careful reading of the council proceedings, which were quite prolonged, and full transcripts of which the inspector transmitted with his report, discloses the fact that the main objection of the Indians to the proposition submitted was that the price to be received by them for their lands was inadequate and that it would not even guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, and with the additional uncertainty that the payments by the settlers might not be made at all.

When the agreement of September 14, 1901, was being concluded the Indians argued with great persistency that their lands were worth more than \$2.50 per acre, and they were almost unanimous in declaring that they were well worth \$5 per acre. Since that time several petitions have been received from the Rosebud Indians earnestly protesting against the ratification of said agreement because of the inadequacy of the compensation. Letters from outside and apparently disinterested parties were also received indicating that the lands were worth a considerably larger price than that agreed to be paid. In fact, one offer was made by parties to take all the lands covered by the cession at the rate of \$5 per acre. On this point the Office seems warranted in saying that from the best information it has been able to obtain a considerable portion of these lands is worth perhaps two or three times the amount proposed to be charged to homestead settlers therefor, and that no doubt the entire tract taken as a whole, exclusive of the allotments, is worth considerable more than \$2.50 per acre.

The Indians can not see, as indicated in their talks and councils and as reported by Inspector McLaughlin, why they should not procure such price for the lands as settlers are willing to pay for them. The Indians in their talks have shown themselves to be not unreasonable in their demands, but simply persisted in demanding what they believed to be just and proper. In fact, many of the Indians during the councils last summer indicated that if the propositions under consideration would guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, that they would not oppose the same. They felt, however, that there was no certainty that they would realize even \$2.50 per acre for the lands proposed to be ceded.

The proposition now made, as contained in said H.R. 50, evidently rests on the assumption that the consent of the Indians to the cession of the lands in question on proper terms can not be procured, and that therefore the lands must be disposed of, if at all, without the consent of the Indians. There is no doubt but that such action by Congress is warranted under the decision of the Supreme Court in the case of *Lone Wolf v. Hitchcock*, handed down on January 5, 1903 (187 U.S., p. 553).

So far as the treaty relations of the Indians with the United States are concerned, the status of the Rosebud Indians is almost identically similar to that of the Kiowas, Comanches, and Apaches, whose treaty was under consideration in the *Lone Wolf* decision. Article 12 of the treaty of April 20, 1868, with the Sioux tribe of Indians (15 Stats. p. 635), contains the following provision:

"No treaty for the cession of any portion or part of the reservation hereon described, which may be held in common, shall be of any validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same," etc.

Although the Kiowa Indians had entered into treaty stipulations with the United States similar to the foregoing, the court, in the *Lone Wolf* case, held that the contention that the Indians could not be divested of their tribal property without their consent was untenable, and that the power of Congress to abrogate the provisions of an Indian treaty had always existed. The court said:

"To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of

Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency, when the necessity might be urgent for a partition and disposal of the tribal lands of all power to act if the assent of the Indians could not be obtained."

It was further held that plenary authority over the tribal relations of the Indians had always been exercised by Congress, and that the power to do so has always been deemed a political one, not subject to be controlled by the Judicial Department of the Government. This power, in the opinion of the court, is a necessary one from the very nature of the relation sustained by the Government toward the Indians and its duty to protect its wards in all their relations.

Respecting the exercise of its power in dealing with the property and other interests of the Indians the court said:

"The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians."

Whether or not the case in hand respecting the Rosebud Indians is such as to justify Congress in disregarding the treaty stipulations, and in opening up and disposing of the lands without the consent of the Indians, is one that must be left to the judgment and wisdom of Congress to determine.

As a general proposition the Office has to say that after careful and mature consideration it is of the opinion that the time has come when Congress and the Indian Department are warranted in administering the tribal interests of the Indians in the United States, including the matter of disposing of such of their lands as they do not need and do not use, without consulting the Indians affected in reference thereto.

It must be assumed, of course, in the adoption of any such policy that those charged with the duty of administering the affairs of the Indians will act in every instance in perfect good faith, and will see that the rights and interests of the Indians are fully preserved and enforced. If, therefore, the bill in hand is to be enacted into law, it is respectfully submitted that the same should be so amended as to insure the procurement to the Indians of an average price of at least \$2.50 per acre for all the lands in question.

The Office is convinced not only that the lands in question are well worth the price indicated as a whole, but that the bill as it now stands will not secure for the Indians the price named. Necessarily a considerable portion of the lands will not be disposed of under any conditions at \$2.50 per acre. In order therefore to procure this price for the whole the better lands must be sold for more than the price fixed in the bill.

Another feature of the bill which the Office is positively of the opinion should be changed is that contained in line 25, page 7, authorizing the Secretary of the Interior, in his discretion, to grant an extension of time to the settler for good cause within which to make his payments. This provision, or any provision authorizing the extension of time to the settler, should be entirely eliminated and omitted, and the Office so recommends.

From ample experience gained in similar provisions in the past the Office feels justified in stating that if the privilege of deferring payments is extended to settlers for any cause that requests for such extensions will be made and multiplied by them until it will become next to impossible to secure payment at all. If the plan of disposing of the Indian lands now proposed is to be adopted, it is respectfully submitted that good faith toward the Indians requires that the payments of the settler shall be absolutely and promptly made, and that there shall be no default whatever. If this be not insisted upon at all times and in every case by Congress and the Indian Department, then there can be no assurance that the Indians will receive for their lands the sum intended to be procured for them and the amount that will be necessary in order to bring them adequate compensation for their lands.

With the modifications and amendments to the bill as above recommended, the Office is of the opinion that the interests of the Indians will be fully conserved and that reasonable compensation will be secured for them for their lands. If so amended, therefore, the Office will interpose no objection to its enactment into law.

The letter of Mr. Sherman and the accompanying bill are herewith returned, and a copy of Office report is inclosed.

Very respectfully,

W.A. Jones,
Commissioner.

The Secretary of the Interior.

Department of the Interior,
Washington, December 6, 1901.

Sir: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated the 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully,

E. A. Hitchcock,
Secretary.

THE PRESIDENT PRO TEMPORE UNITED STATES
SENATE.

Department of the Interior,
Office of Indian Affairs,
Washington, November 23, 1901.

Sir: The Office has the honor to acknowledge the receipt of a letter, dated October 11, 1901, from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement, dated September 14, 1901, with the Indians of the Rosebud Reser-

vation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the Office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to that end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the lands opened up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The Office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 9, 1901, a draft of instructions was prepared by this Office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the

Department on March 21, 1901, and Inspector McLaughlin detailed for the duty of conducting negotiations.

In his report, dated October 5, 1901, the inspector states that he arrived at the Rosebud Agency on April 2, 1901, for the purpose of entering upon negotiations with the Indians, and that upon his arrival it was ascertained that small-pox was prevalent on the reservation, wherefore he deemed it inadvisable to assemble the Indians in general council. He states, however, that he made a trip to the Ponca Creek district, which is in Gregory County, about 100 miles east of the agency, for the purpose of conferring with the Indians there who would be the most affected by the cession, and for the purpose of traveling over that portion of the reserve and securing a knowledge of the lands whose session it was proposed to secure.

Negotiations having been postponed at that time, with the approval of the Department, the inspector states that he proceeded to carry out orders elsewhere, and returned to the Rosebud Agency on August 28 last and at once entered upon negotiations which, though somewhat protracted and at times discouraging, he says have been satisfactorily concluded.

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 73 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existing statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated, September 14, 1901, and contains the signatures of James McLaughlin, United States Indian inspector, and of 1,031 male adults Indians of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement to the effect that the provisions thereof were fully explained by them to the Indians in open council, that it was fully understood by them before signing, and that the signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Another certificate is attached to the agreement, dated October 4, 1901, by Frank Mullen, agency clerk, and by C.H. Bennett, John Sullivan, Frank Robinson, Frank Sypal, Isaac Bettelyoun, and James A. McCorkle, farmers of the several districts of the reservation, and Louis Bordeaux, ex-farmer of the agency district, to the effect that they witnessed the signatures of United States Indian Inspector McLaughlin and of the 1,031 Indians of the Rosebud Agency to the agreement.

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three-fourths of the male adult population of the reservation.

Respecting the terms of the cession, Inspector McLaughlin states in his report that he was greatly handicapped in the beginning by the fact

that most of the Indians who favored a cession at all held the lands at an enormous price—from \$7 to \$15 per acre; that only a very few expressed their willingness to accept as low as \$5 per acre, and this in cash and all in one payment; that upon his arrival all the white men connected with the agency, as well as those of the surrounding country with whom he talked, held the lands in question as worth \$5 per acre; that it appeared that adjacent lands in Gregory County and in Hoyt County, Nebr., were selling at from \$5 to \$10 per acre; that a syndicate of cattlemen in Sioux City, Iowa, expressed its willingness to pay \$5 per acre for the entire tract, and that these current rumors and fictitious values placed upon the lands which were circulated among the Indians exercised them very much and had to be overcome by reasoning, which required time and a great amount of patience.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that whilst he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased, whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached.

The inspector refers to the minutes of the council proceedings transmitted with his report as showing the numerous questions raised by the Indians and his answers to their contentions; also,

as showing that he finally convinced a number of the leading men of the wisdom of cooperating with him in formulating an agreement.

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land, and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek Day School, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 398.67 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years, will aid the Indians materially in providing for their family needs during that time, after which the

matured cattle, the increase from the stock issued to them, will be marketable and will, with proper care, give them an annual revenue thereafter. The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indians accept such provisions, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could not be made. The Indians insisted for a long time upon having the entire \$790,000 paid to them in cash in one payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

The inspector transmits with his report a map, prepared by Special Allotting Agent W.A. Winder, of the portion of the reservation proposed to be ceded, which shows the several Indian allotments therein, with the names of the allottees, and also the unallotted portions; also a package of correspondence had with the State authorities of South Dakota relative to the boundaries of Gregory County, and the description of the eastern portion of the reservation.

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians

would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement.

The agreement appears to be properly executed and in form for acceptance and ratification by Congress. It is deemed proper in this connection to refer especially to the provisions of article 4, which are evidently intended to fix the status of mixed-blood Indians upon that reservation, and to insure the undisturbed residence thereon of white men intermarried with the Indians. It does not appear that this provision extends to mixed bloods as a class any rights or benefits that they did not have before, unless possibly to secure rights to children born of a marriage since the enactment of the provision contained in the Indian appropriation act of June 7, 1897 (30 Stat., p. 62), which reads as follows:

"That all children born of a marriage heretofore solemnized between a white man and Indian woman by blood and not by adoption, where said Indian woman is at this time, or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior act of Congress shall be construed as to bar such child of such right."

Respecting the residence of white men intermarried with Indian women, it may be proper to state that this right has always been extended in such cases and permitted so long as the conduct of such white men on the reservation is not detrimental to the peace and welfare of the Indians.

The Office sees no serious objection to the embodiment of this article in the agreement.

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this Office and from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the amount necessary to carry the provisions of articles 2 and 3 of the agreement into effect.

The matter of the disposition of the land ceded is one properly for the Department and the Commission of the General Land Office to arrange. It is suggested that such disposition may be provided for by the addition of another section to the draft of the bill inclosed. In this connection it is suggested that the section added should provide for the disposition of the lands ceded, "excepting such tracts as may be reserved by the President, not exceeding 398.67 acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions."

Besides the draft of the bill in duplicate, there are transmitted herewith two copies of the agreement, two copies of the council proceedings, two

copies of correspondence had by Inspector McLaughlin with the State authorities of South Dakota respecting the boundaries of Gregory County, two blue prints of map, and two copies of this report, with the recommendation that one copy of each be transmitted to the Senate and House of Representatives, respectively, with request for favorable action on the agreement.

The original agreement and papers accompanying the same are transmitted herewith, with the request that they be returned to the files of this Office when the same shall have served their purpose.

Very respectfully, your obedient servant,

W.A. Jones, *Commissioner*.

The Secretary of the Interior.

[Supreme Court of the United States. No. 275—October Term, 1902. Lone Wolf, principal chief of the Kiowas et. al., appellants v. Ethan A. Hitchcock, Secretary of the Interior et. al. Appeal from the court of appeals of the District of Columbia. January 5, 1903.]

In 1867 a treaty was concluded with the Kiowa and Comanche tribes of Indians, and such other friendly tribes as might be united with them, setting apart a reservation for the use of such Indians. By a separate treaty the Apache tribe of Indians was incorporated with the two former named and became entitled to share in the benefits of the reservation. (15 Stat., 581, 589.)

The first-named treaty is usually called the Medicine Lodge treaty. By the sixth article thereof it was provided that heads of families might select a tract of land within the reservation, not exceed-

ing 320 acres in extent, which should thereafter cease to be held in common, and should be for the exclusive possession of the Indian making the selection, so long as he or his family might continue to cultivate the land. The twelfth article of the treaty was as follows:

"Article 12. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in Article III (VI) of this treaty."

The three tribes settled under the treaties upon the described land. On October 6, 1892, 456 male adult members of the confederated tribes signed, with three commissioners representing the United States, an agreement concerning the reservation. The Indian agent, in a certificate appended to the agreement, represented that there were then 562 male adults in the three tribes. (Senate Ex. Doc. No. 27, Fifty-second Congress, second session, p. 17.) Four hundred and fifty-six male adults therefore constituted more than three-fourths of the certified number of total male adults in the three tribes. In form, the agreement was a proposed treaty, the terms of which, in substance, provided for a surrender to the United States of the rights of the tribes in the reservation, for allotments out of such lands to the Indians in severalty, the fee-simple title to be conveyed to the allottees or their heirs after the expiration of twenty-five years, and the payment or setting apart for the benefit of the tribes of \$2,000,000 as the consider-

ation for the surplus of land over and above the allotments which might be made to the Indians. It was provided that sundry named friends of the Indians (among such persons being the Indian agent and an army officer) "should each be entitled to all the benefits, in land only, conferred under this agreement, the same as if members of said tribes." Eliminating 350,000 acres of mountainous land, the quantity of surplus lands suitable for farming and grazing purposes was estimated at 2,150,000 acres. Concerning the payment to be made for these surplus lands, the Commission, in their report to the President announcing the termination of the negotiations, said (Senate Ex. Doc. No. 17, second session Fifty-second Congress):

"In this connection it is proper to add that the Commission agreed with the Indians to incorporate the following in their report, which is now done:

"The Indians upon this reservation seem to believe (but whether from an exercise of their own judgment or from the advice of others the Commission can not determine) that their surplus land is worth \$2,500,000, and Congress may be induced to give them that much of it. Therefore, in compliance with their request, we report that they desire to be heard through an attorney and a delegation to Washington upon that question, the agreement signed, however, to be effective upon ratification, no matter what Congress may do with their appeal for the extra half million dollars."

In transmitting the agreement to the Secretary of the Interior the Commissioner of Indian Affairs said:

"The price paid, while considerably in excess of that paid to the Cheyennes and Arapahoes, seems to be fair and reasonable, both to the Government and the Indians, the land being doubtless of better

quality than that in the Cheyenne and Arapahoe Reservation."

Attention was directed to the provision in the agreement in favor of the Indian agent and an army officer, and it was suggested that to permit them to avail thereof would establish a bad precedent.

Soon after the signing of the foregoing agreement it was claimed by the Indians that their assent had been obtained by fraudulent misrepresentations of its terms by the interpreters, and it was asserted that the agreement should not be held binding upon the tribes because three-fourths of the adult male members had not assented thereto, as was required by the twelfth article of the Medicine Lodge treaty.

Obviously, in consequence of the policy embodied in section 2079 of the Revised Statutes, departing from the former custom of dealing with Indian affairs by treaty and providing for legislative action on such subjects, various bills were introduced in both Houses of Congress designed to give legal effect to the agreement made by the Indians in 1892. These bills were referred to the proper committee, and before such committees the Indians presented their objections to the propriety of giving effect to the agreement. (House Doc. No. 431, Fifty-fifth Congress, second session.) In 1898 the Committee on Indian Affairs of the House of Representatives unanimously reported a bill for the execution of the agreement made with the Indians. The report of the committee recited that a favorable conclusion had been reached by the committee "after the fullest hearings from delegations of the Indian tribes and all parties at interest." (House Doc. No. 419, first session Fifty-sixth Congress, p. 5.)

The bill thus reported did not exactly conform to the agreement as signed by the Indians. It modified the agreement by changing the time for making the allotments, and it also provided that the proceeds of the surplus lands remaining after allotments to the Indians should be held to await the judicial decision of a claim asserted by the Choctaw and Chickasaw tribes of Indians to the surplus lands. This claim was based upon a treaty made in 1866, by which the two tribes ceded the reservation in question, it being contended that the lands were impressed with a trust in favor of the ceding tribes, and that whenever the reservation was abandoned so much of it as was not allotted to the confederated Indians of the Comanche, Kiowa, and Apache tribes reverted to the Choctaws and Chickasaws.

The bill just referred to passed the House of Representatives on May 16, 1898. (31st Cong. Rec., p. 4947.) When the bill reached the Senate that body, on January 25, 1899, adopted a resolution calling upon the Secretary of the Interior for information as to whether the signatures attached to the agreement comprised three-fourths of the male adults of the tribes. In response the Secretary of the Interior informed the Senate, under date of January 28, 1899, that the records of the Department "failed to show a census of these Indians for the year 1892," but that "from a roll used in making a ^{survey}ment to them in January and February, 1893, it appeared that there were 725 males over 18 years of age, of whom 639 were 21 years and over." The Secretary further called attention to the fact that by the agreement of 1892 a right of selection was conferred upon each member of the tribes over 18 years of age, and observed:

"If 18 years and over be held to be the legal age of those who were authorized to sign the agreement, the number of persons who actually signed was 87 less than three-fourths of the adult male membership of the tribes; and if 21 years be held to be the minimum age, then 23 less than three-fourths signed the agreement. In either event, less than three-fourths of the male adults appear to have so signed."

With this information before it the bill was favorably reported by the Committee on Indian Affairs of the Senate, but did not pass that body.

At the first session of the following Congress (the Fifty-sixth) bills were introduced in both the Senate and House of Representatives substantially like that which has just been noticed. (S. 1352; H.R. 905.)

In the meanwhile, about October, 1899, the Indians had, at a general council at which 571 male adults of the tribes purported to be present, protested against the execution of the provisions of the agreement of 1892, and adopted a memorial to Congress, praying that that body should not give effect to the agreement. This memorial was forwarded to the Secretary of the Interior by the Commissioner of Indian Affairs with lengthy comments, pointing out the fact that the Indians claimed that their signatures to the agreement had been procured by fraud and that the legal number of Indians had not signed the agreement, and that the previous bills and bills then pending contemplated modification of the agreement in important particulars without the consent of the Indians.

This communication from the Commissioner of Indian Affairs, together with the memorial of the Indians, was transmitted by the Secretary of the Interior to Congress. (Senate Doc. No. 76; House Doc. No. 333, first session Fifty-sixth Congress.)

Attention was called to the fact that although by the agreement of October 6, 1892, one-half of each allotment was contemplated to be agricultural land, there was only sufficient agricultural land in the entire reservation to average 30 acres per Indian. After setting out the charges of fraud and complaints respecting the proposed amendments designed to be made to the agreement, as above stated, particular complaint was made of the provision in the agreement of 1892 as to allotments in severalty among the Indians of lands for agricultural purposes. After reciting that the tribal lands were not adapted to such purposes, but were suitable for grazing, the memorial proceeded as follows:

"We submit that the provisions for lands to be allotted to us under this treaty are insufficient, because it is evident we can not, on account of the climate of our section, which renders the maturity of crops uncertain, become a successful farming community; that we, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support. And we therefore pray, if we can not be granted the privilege of keeping our reservation under the treaty made with us in 1868, and known as the Medicine Lodge treaty, that authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to us sufficient for us to graze upon it enough stock cattle, the increase from which we can market for support of ourselves and families."

With the papers just referred to before it, the House Committee on Indian Affairs, in February, 1900, favorably reported a bill to give effect to the agreement of 1892.

On January 19, 1900, an act was passed by the Senate entitled "An act to ratify an agreement

made with the Indians of the Fort Hall Indian Reservation in Idaho, and making an appropriation to carry the same into effect." In February, 1900, the House Committee on Indian Affairs, having before it the memorial of the Indians transmitted by the Secretary of the Interior, and also having for consideration the Senate bill just alluded to, reported that bill back to the House favorably, with certain amendments. (House Doc. No. 419, Fifty-sixth Congress, first session.) One of such amendments consisted in adding to the bill in question, as section 6, a provision to execute the agreement made with the Kiowa, Comanche, and Apache Indians in 1892. Although the bill thus reported embodied the execution of the agreement last referred to, the title of the bill was not changed, and consequently referred only to the execution of the agreement made with the Indians of the Fort Hall Reservation, in Idaho. The provisions thus embodied in section 6 of the bill in question substantially conformed to those contained in the bill which had previously passed the House, except that the previous enactment on this subject was changed so as to do away with the necessity for making to each Indian one half of his allotment in agricultural land and the other half in grazing land. In addition a clause was inserted in the bill providing for the setting apart of a large amount of grazing land to be used in common by the Indians. The provision in question was as follows:

"That in addition to the allotment of lands to said Indians as provided for in this agreement, the Secretary of the Interior shall set aside for the use in common for said Indian tribes 480,000 acres of grazing lands, to be selected by the Secretary of the Interior, either in one or more tracts as will best subserve the interest of said Indians."

The provision of the agreement in favor of the Indian agent and army officer was also eliminated.

The bill, moreover, exempted the money consideration for the surplus lands from all claims for Indian depredations, and expressly provided that in the event the claim of the Choctaws and Chickasaws was ultimately sustained the consideration referred to should be subject to the further action of Congress. In this bill, as in previous ones, provision was made for allotments to the Indians, the opening of the surplus land for settlement, etc. The bill became a law by concurrence of the Senate in the amendments adopted by the House as just stated.

Thereafter, by acts approved on January 4, 1901 (chap. 8, 31 Stat., 727), March 3, 1901 (chap. 832, 31 Stat., 1078), and March 3, 1901 (chap. 846, 31 Stat., 1093), authority was given to extend the time for making allotments and opening of the surplus land for settlement for a period not exceeding eight months from December 6, 1900; appropriations were made for surveys in connection with allotments and setting apart of grazing lands; and authority was conferred to establish counties and county seats, town sites, etc., and proclaim the surplus lands open for settlement by white people.

On June 6, 1901, a bill was filed on the equity side of the supreme court of the District of Columbia wherein Lone Wolf (one of the appellants herein) was named as complainant, suing for himself as well as for all other members of the confederated tribes of the Kiowa, Comanche, and Apache Indians residing in the Territory of Oklahoma. The present appellees (the Secretary of the Interior, the Commissioners of Indian Affairs, and the Commissioner of the General Land Office)

were made respondents to the bill. Subsequently, by an amendment to the bill, members of the Kiowa, Comanche, and Apache tribes were joined with Lone Wolf as parties complainant.

The bill recited the establishing and occupancy of the reservation in Oklahoma by the confederated tribes of Kiowas, Comanches, and Apaches, the signing of the agreement of October 6, 1892, and the subsequent proceedings which have been detailed, culminating in the passage of the act of June 6, 1900, and the acts of Congress supplementary to said act.

In substance it was further charged in the bill that the agreement had not been signed as required by the Medicine Lodge treaty—that is, by three-fourths of the male adult members of the tribe—and that the signatures thereto had been obtained by fraudulent misrepresentations and concealment, similar to those recited in the memorial signed at the 1899 council. In addition to the grievance previously stated in the memorial, the charge was made that the interpreters falsely represented, when the said treaty was being considered by the Indians, that the treaty provided “for the sale of their surplus lands at some time in the future at the price of \$2.50 per acre,” whereas in truth and in fact, “by the terms of said treaty only \$1 an acre is allowed for said surplus lands,” which in sum, it was charged, was an amount far below the real value of said lands. It was also averred that portions of the signed agreement had been changed by Congress without submitting such changes to the Indians for their consideration.

Based upon the foregoing allegations, it was alleged that so much of said act of Congress of June 6, 1900, and so much of said acts supplementary thereto and amendatory thereof as provided for the taking effect of said agreement, the allot-

ment of certain lands mentioned therein to members of said Indian tribes, the surveying, laying out and platting town sites and locating county seats on said lands, and the ceding to the United States and the opening to settlement by white men of 2,000,000 acres of said lands, were enacted in violation of the property rights of the said Kiowa, Comanche, and Apache Indians, and if carried into effect would deprive said Indians of their lands without due process of law, and that said parts of said acts were contrary to the Constitution of the United States, and were void, and conferred no right, power, or duty upon the respondents to do or perform any of the acts or things enjoined or required by the acts of Congress in question. Alleging the intention of the respondents to carry into effect the aforesaid claimed unconstitutional and void acts, and asking discovery by answers to interrogatories propounded to the respondents, the allowance of a temporary restraining order, and a final decree awarding a perpetual injunction was prayed, to restrain the Commission by the respondents of the alleged unlawful acts by them threatened to be done. General relief was also prayed.

On January 6, 1901, a rule to show cause why a temporary injunction should not be granted was issued. In response to this rule an affidavit of the Secretary of the Interior was filed, in which in substance it was averred that the complainant (Lone Wolf) and his wife and daughter had selected allotments under the act of June 6, 1900, and the same had been approved by the Secretary of the Interior, and that all other members of the tribes, excepting twelve, had also accepted and retained allotments in severalty, and that the greater part thereof had been approved before the bringing of this suit. It was also averred that the

480,000 acres of grazing land provided to be set apart, in the act of June 6, 1900, for the use by the Indians in common, had been so set apart prior to the institution of the suit, "with the approval of a council composed of chiefs and headmen of said Indians." Thereupon an affidavit verified by Lone Wolf was filed, in which, in effect, he denied that he had accepted an allotment of lands under the act of June 6, 1900, and the acts supplementary to and amendatory thereof. Thereafter, on June 17, 1901, leave was given to amend the bill, and the same was amended, as heretofore stated, by adding additional parties complainant and by providing a substituted first paragraph of the bill, in which was set forth, among other things, that the three tribes, at a general council held on June 7, 1901, had voted to institute all legal and other proceedings necessary to be taken to prevent the carrying into effect of the legislation complained of.

The supreme court of the District, on June 21, 1901, denied the application for a temporary injunction. The cause was thereafter submitted to the court on a demurrer to the bill as amended. The demurrer was sustained, and the complainants electing not to plead further, on June 26, 1901, a decree was entered in favor of the respondents. An appeal was thereupon taken to the court of appeals of the District. While this appeal was pending the President issued a proclamation, dated July 4, 1901 (32 Stat., Appendix Proclamations, 11), in which it was ordered that the surplus lands ceded by the Comanche, Kiowa, and Apache and other tribes of Indians should be opened to entry and settlement on August 6, 1901. Among other things, it was recited in the proclamation that all the conditions required by law to be performed

prior to the opening of the lands to settlement and entry had been performed. It was also therein recited that in pursuance of the act of Congress ratifying the agreement, allotments of land in severalty had been regularly made to each member of the Comanche, Kiowa, and Apache tribes of Indians; the lands occupied by religious societies or other organizations for religious or educational work among the Indians had been regularly allotted and confirmed to such societies and organizations, respectively, and the Secretary of the Interior, out of the lands ceded by the agreement, had regularly selected and set aside for the use in common for said Comanche, Kiowa, and Apache tribes of Indians 480,000 acres of grazing lands.

The court of appeals (without passing on a motion which had been made to dismiss the appeal) affirmed the decree of the court below and overruled a motion for reargument. (19 App. D.C.,—.) An appeal was allowed, and the decree of affirmance is now here for review.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the court:

By the sixth article of the first of the two treaties referred to in the preceding statement, proclaimed on August 25, 1868 (15 Stat., 581), it was provided that heads of families of the tribes affected by the treaty might select within the reservation a tract of land not exceeding 320 acres in extent, which should thereafter cease to be held in common, and should be for the exclusive possession of the Indian making the selection so long as he or his family might continue to cultivate the land. The twelfth article reads as follows:

"Article 12. No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any

validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in Article III (VI) of this treaty."

The appellants base their right to relief on the proposition that by the effect of the article just quoted the confederated tribes of Kiowas, Comanches, and Apaches were vested with an interest in the lands held in common within the reservation, which interest could not be divested by Congress in any other mode than that specified in the said twelfth article, and that as a result of the said stipulation the interest of the Indians in the common lands fell within the protection of the fifth amendment to the Constitution of the United States, and such interest, indirectly at least, came under the control of the judicial branch of the Government. We are unable to yield our assent to this view.

The contention in effect ignores the status of the contracting Indians and the relation of dependency they bore and continue to bear toward the Government of the United States. To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency when the necessity might be urgent for a partition and disposal of the tribal lands, of all power to act if the assent of the Indians could not be obtained.

Now, it is true that in decisions of this court the Indian right of occupancy of tribal lands, whether declared in a treaty or otherwise created,

has been stated to be sacred, or, as sometimes expressed, as sacred as the fee of the United States in the same lands. (*Johnson v. McIntosh* (1823), 8 Wheat., 543, 574; *Cherokee Nation v. Georgia* (1831), 5 Pet., 1, 48; *Worcester v. Georgia* (1832), 6 Pet., 515, 581; *United States v. Cook* (1873), 19 Wall., 591, 592; *Leavenworth, etc., R. R. Co. v. United States* (1875), 92 U.S., 733, 755; *Beecher v. Wetherby* (1877), 95 U.S., 525.)

But in none of these cases was there involved a controversy between Indians and the Government respecting the power of Congress to administer the property of the Indians. The questions considered in the cases referred to, which either directly or indirectly had relation to the nature of the property rights of the Indians, concerned the character and extent of such rights as respected States or individuals. In one of the cited cases it was clearly pointed out that Congress possessed a paramount power over the property of the Indians, by reason of its exercise of guardianship over their interests, and that such authority might be implied, even though opposed to the strict letter of a treaty with the Indians. Thus, in *Beecher v. Wetherby* (95 U.S., 525), discussing the claim that there had been a prior reservation of land by treaty to the use of a certain tribe of Indians, the court said (p. 525):

"But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States. It is to be presumed that in this matter the United States would be governed by such considerations of

justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action toward the Indians with respect to their lands is a question of governmental policy, and is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians."

Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the Government. Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and, of course, a moral obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. But, as treaties made with foreign nations (*Chinese Exclusion Cases*, 130 U.S., 581, 600), the legislative power might pass laws in conflict with treaties made with the Indians. (*Thomas v. Gay*, 169 U.S., 264, 270; *Ward v. Race Horse*, 163 U.S., 504, 511; *Spalding v. Chandler*, 160 U.S., 394, 405; *Missouri, Kansas and Texas Ry. Co. v. Roberts*, 152 U.S., 114, 117; *The Cherokee Tobacco*, 11 Wall., 616.)

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians, it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of govern-

mental policy, particularly if consistent with perfect good faith toward the Indians. In *United States v. Kagama* (1885), 118 U.S., 375, speaking of the Indians, the court said (p. 382):

"After an experience of a hundred years of the treaty-making system of government Congress has determined upon a new departure—to govern them by acts of Congress. This is seen in the act of March 3, 1871, embodied in section 2079 of the Revised Statutes: 'No Indian nation or tribe, within the territory of the United States, shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.'"

In upholding the validity of an act of Congress which conferred jurisdiction upon the courts of the United States for certain crimes committed on an Indian reservation within a State, the court said (p. 383):

"It seems to us that this is within the competency of Congress. These Indian tribes are the wards of the nation. They are communities dependent on the United States; dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weaknesses and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress and by this court, whenever the question has arisen.

* * * * *

"The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes."

That Indians who had not been fully emancipated from the control and protection of the United States are subject, at least so far as the tribal lands were concerned, to be controlled by direct legislation of Congress is also declared in *Choctaw Nation v. United States* (119 U.S., 1, 27) and *Stephens v. Choctaw Nation* (174 U.S., 445, 483).

In view of the legislative power possessed by Congress over treaties with the Indians and Indian tribal property, we may not specially consider the contentions pressed upon our notice that the signing by the Indians of the agreement of October 6, 1892, was obtained by fraudulent misrepresentations and concealment; that the requisite three-fourths of adult male Indians had not signed, as required by the twelfth article of the treaty of 1867, and that the treaty as signed had been amended by Congress without submitting such amendments to the action of the Indians, since all these matters, in any event, were solely within the domain of the legislative authority, and its action is conclusive upon the courts.

The act of June 6, 1900, which is complained of in the bill, was enacted at a time when the tribal relations between the confederated tribes of Kiowas, Comanches, and Apaches still existed, and that statute and the statute supplementary thereto

dealt with the disposition of tribal property and purported to give an adequate consideration for the surplus lands not allotted among the Indians or reserved for their benefit. Indeed, the controversy which this case presents is concluded by the decision in *Cherokee Nation v. Hitchcock* (— U.S., —), decided at this term, where it was held that full administrative power was possessed by Congress over Indian tribal property.

In effect, the action of Congress now complained of was but an exercise of such power, a mere change in the form of investment of Indian tribal property, the property of those who, as we have held, were in substantial effect the wards of the Government. We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the Government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary can not question or inquire into the motives which prompted the enactment of this legislation. If injury was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought by an appeal to that body for redress and not to the courts. The legislation in question was constitutional, and the demurrer to the bill was therefore rightly sustained.

The motion to dismiss does not challenge jurisdiction over the subject-matter. Without expressly referring to the propositions of fact upon which it proceeds, suffice it to say that we think it need not be further adverted to, since, for the reasons previously given and the nature of the controversy, we think the decree below should be affirmed.

And it is so ordered.

Mr. Justice Harlan concurs in the result.

[#15C]

(Senate Report to accompany H.R. 10418)

[S. Rep. No. 651, 58th Cong. 2d Sess. 1-12 (1904)]

AN AGREEMENT WITH INDIANS OF THE
ROSEBUD RESERVATION, S. DAK.

FEBRUARY 4, 1904.—Ordered to be printed.

Mr. GAMBLE, from the Committee on Indian Affairs,
submitted the following

REPORT.

[To accompany H.R. 10418.]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 10418) ratifying and amending an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making an appropriation and provision to carry the same into effect, having had the same under advisement, make the following report and recommend that the bill do pass.

The bill in question was very fully and carefully considered by the Committee on Indian Affairs in the House, and an extended report recommending its passage was submitted thereon. The present bill is substantially the same as H.R. 50, upon which the report of the Department is based. It was modified to conform to the recommendations of the Department and reintroduced as H.R. 10418.

The subject-matter of the measure is so fully covered by the House report thereon, the substance thereof is hereby adopted and made a part of this report.

[From House Report No. 443, Fifty-eighth Congress,
second session.]

The purpose of this bill is to ratify and amend an agreement made with the Rosebud Indians in South Dakota by Inspector James McLaughlin, dated September 14, 1901, providing for the cession to the United States of the unallotted portion of their lands in Gregory County, S. Dak., and opening the same to settlement and entry under the homestead and town-site laws.

The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There are 452 Indians holding allotments in the county aggregating 104,999 acres.

The agreement, as made with the Indians, provided that the United States should pay for the land at the rate of \$2.50 per acre, and from the proceeds \$250,000 was to be expended in the purchase of stock cattle for the benefit of the Indians, and the balance was to be paid per capita in cash, in five annual installments. A bill for the ratification of this treaty and opening the land to settlement was transmitted by the Secretary of the Interior to Congress in the first session of the Fifty-seventh Congress. This bill provided simply for a ratification of the treaty and that the lands were to be disposed of under the provisions of the homestead law at \$2.50 per acre.

The bill was reported by this committee and was also favorably reported by the Committee on Indian Affairs in the Senate and passed the Senate. It appearing that the House was opposed to the passage of the same a new bill was presented late in the second session of the Fifty-seventh Congress, substantially the same as the present bill now under consideration, which was favorably reported by this committee, but too late in the session to have consideration in the House.

Both of these bills present a new idea in acquiring Indian lands, and if this bill should be enacted into law it will establish a new policy and be a departure from the policy that has long since prevailed in acquiring Indian lands, as heretofore it has been the practice and policy of the Government to purchase lands from the Indians and pay them therefor and then open the same to entry and settlement, and if not immediately, ultimately, under the provisions of what is known as the free-homestead act.

This bill provides that the lands shall be disposed of under the homestead laws by the settler paying therefor and the proceeds paid to the Indians, and it is expressly provided by section 6 of this bill that the United States shall in no manner be bound to purchase any portion of the land except the school sections, or to dispose of the same except as provided, or to guarantee to find purchasers for said lands, it expressly stating that the intention of the act is that the United States shall act as trustee for the Indians in disposing of the lands and pay over the proceeds from the sale thereof only as the same are received.

The provision that \$250,000 of the amount received shall be expended for purchase of stock cattle is in accordance with the original treaty and is considered a wise provision, as it will be better for the Indians than

to pay them entirely in cash, and thus enable them to better become self-supporting.

The bill further provides that not more than \$150,000 in cash shall be paid to the Indians in any one year, which is also substantially the same as the treaty provides. Section 4 of the bill provides that sections 16 and 36, or the equivalent of two sections in every township, shall be ceded to the State of South Dakota for school purposes and paid for by the United States at \$2.50 per acre, and section 5 provides for an appropriation of \$90,000 for this purpose. This is in conformity with the guaranty given to the State of South Dakota by Congress in the enabling act, which provides that in any reservations opened to settlement subsequent to the admission of the State into the Union sections 16 and 36 would be reserved and ceded to the State for school purposes.

The provision of the bill for payment for the land by settlers in installments is deemed a wise one, as it will make it easy for the settler to pay for the land and will also provide a fund to pay the Indians an annual per capita cash payment.

The price of the land is fixed by the bill at \$3 per acre for all that is entered during the first six months after the same shall be opened to settlement and entry, and the price thereafter to be \$2.50 per acre, with a provision that at the expiration of four years from the taking effect of this act all lands remaining undisposed of shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior.

There is no question but what the Indians have no use for the land that is proposed to be ceded by this bill; that the tract is only a very small portion of the Rosebud Reservation, and is really only a corner of the

reservation, which will be left compact and in a square tract and a reservation about equal in size to the Pine Ridge Reservation, in South Dakota.

That in disposing of it the said Rosebud Indians will receive a per capita payment of \$30.50 each year for a period of five years, aggregating \$152.50 to each man, woman, and child, and it is thought that this payment and the matured increase that will be marketable from the stock cattle that will be given to the Indians under the terms of this bill will put them in a condition much more self-supporting than they are at present and relieve the Government from the responsibility and expense of caring for them.

Inspector McLaughlin, who negotiated the treaty with these Indians, in one of the councils said:

The census rolls show 4,917 persons belonging to this agency, which would give an annual per capita allowance of \$30.50; that is \$30.50 once a year to each man, woman, and child for a period of five years, aggregating \$152.50 that each man, woman, and child would receive in the five years.

At the expiration of five years, when this per capita payment would end, the matured increase derived from your stock cattle would then be marketable and continue to furnish a large number of beef cattle annually thereafter, which would place you upon an independent footing, and with proper care of your cattle would insure you a regular annual income. * * * Then the stock cattle, which, if properly cared for, will bring about a great deal of prosperity among you people. And in the third place, the cash payment for five years, which would enable you to take care of your families without any suffering until you begin to receive returns from the marketable cattle, the increase of the cattle that will be issued to you.

The passage of this bill will open for settlement 416,000 acres of land, which will be settled upon, cultivated, and improved, and turned into actual homes. This will enhance very materially the value of the 452 Indian allotments which are within the area proposed to be ceded, and it will also bring the Indians into contact with their white brothers, and give them the benefit of learning how to farm and raise stock from actual observation, and it will tend to make them more self-supporting, and be a great improvement upon their present condition, many of them being dependent upon the bounty of the Government, and the sooner Indian reservations are broken up and the Indians required to take their allotments and their surplus lands opened to settlement, the better it will be for the advancement and higher civilization of the Indian.

The principal question that the committee has had to determine in relation to this bill is, whether or not Congress has the right, and whether it should legislate to dispose of Indian lands without the consent of the Indians, and whether it would be proper to pass this bill without providing for submitting it to the Indians for their ratification and approval, in accordance with existing treaty stipulations. As to the power of Congress to so legislate there can be no question. That Congress has heretofore so legislated is established by the passage of a bill ratifying and amending a treaty with the Kiowa, Comanche, and Apache tribes of Indians in Oklahoma; the bill ratifying and amending said treaty was reported from this committee in the first session, Fifty-sixth Congress (see H.R. 342, 56th Cong., 1st sess.), and the principal objection urged against the ratification of the treaty in that case was, that it was not signed by three-fourths of the adult male Indians of the tribe, as provided by existing treaty stipulations.

The bill, however, was enacted into law, and subsequently the validity of the law and the right of Congress to legislate without the consent of the Indians was decided by the Supreme Court of the United States in the case of *Lone Wolf v. Hitchcock*, January 5, 1903 (187 U.S., p. 553), and in this connection attention is called to the report upon H.R. 50, made by the Commissioner of Indian Affairs, under date of January 9, 1904, which report, with a letter of the Secretary of the Interior, is herewith submitted, and the full decision in said case is also herewith appended.

While the committee recognizes the right of Congress to legislate without consent of the Indians, it is not prepared to say that it should do so in all cases, and only where after mature consideration it appears that the Indians will be benefited thereby, and that the circumstances justify such legislation.

In this instance there is a treaty executed strictly as provided by former treaty stipulations, more than three-fourths of the male adult Indians having signed the same. Furthermore, as appears by the report of the Commissioner of Indian Affairs, a treaty containing substantially the provisions of this bill, except that it only provided to pay the Indians \$2.75 per acre for their land, was submitted to the Rosebud Indians by Inspector McLaughlin in August last, and forty-eight more than a majority of said Indians signed the same. It appearing, therefore, that more than three-fourths of the male adult Indians signed the original treaty, that more than a majority were willing to sell at a less price than provided in this bill, and the fact that the Department recommends the passage of the measure, provided the Indians can be insured of a lump sum equal to \$1,040,000, the amount mentioned in the original treaty, and the committee having fixed a price

that it is believed will more than insure this amount it is thought wise and no hardship or even injustice to the Indians to have such a measure passed, and for that reason recommend the passage of the bill.

Upon the general question as to the policy of legislating for the Indians without consulting them or entering into any treaty whatever, attention is called to the report of the Commissioner of Indian Affairs, herewith submitted, and also to the testimony of the Commissioner before the committee, upon this point, as follows:

If you depend upon the consent of the Indians as to the disposition of the lands where they have the fee to the land, you will have difficulty in getting it, and I think the decision in the *Lone Wolf* case, that Congress can do as it sees fit with the property of the Indians will enable you to dispose of that land without the consent of the Indians. If you wait for their consent in these matters, it will be fifty years before you can do away with the reservations. You know, and Mr. Curtis especially knows, that the most intelligent tribe in the Indian Territory are the Cherokees; they are practically white, yet they were the last to consent to the distribution of their land, and did not so until the Curtis Act compelled them to consent to it, so that no matter to what stage of intelligence or growth or civilization an Indian tribe has attained, it does not necessarily follow that you will get their consent.

Take the case of the New York Indians which you had before you in the last Congress, and which, I assume, will come up again this year. If you depend upon the consent of those Indians to separate their lands and distribute their funds it will be fifty years before you get it. The public

policy, the policy of the Government, is against segregating and setting aside large tracts of land for the benefit of the Indians, which simply become festers on the surface of the country in which they are located. I believe in dealing fairly with the Indian. Give him what is absolutely his. Give him 80 or 160 acres, or if it is necessary, give him two or three hundred acres of grazing land, on which he can make a living under the conditions existing in the State where it is located. If the Indian has the right to the land, then, I think, you should set aside what funds are derived from it and pay them out gradually to him and not in a lump sum. I know I am running counter to the traditions of the office of my superiors in this, but hereafter, when asked to make any report on these bills, I shall report in favor of Congress taking the property of the Indians without their consent.

Mr. BURKE. Would you make that statement general or would you except reservations where there may be in existence treaty relations that provide directly to the contrary? For instance, do you know there is in existence among the Sioux—I think in the treaty of 1868—a provision that the Indians will not be deprived of their lands without the consent of three-fourths, and that provision was reenacted, I think, in the treaty of 1889.

COMMISSIONER JONES. I will go to the extreme. I do not think I would ask the consent of the Indians in that case. Supposing you were the guardian or ward of a child 8 or 10 years of age, would you ask the consent of the child as to the investment of its funds? No; you would not, and I do not think it is a good business principle in this case.

The price of the land as provided in the bill will not only insure the amount for which the Indians agreed to

sell, but in the opinion of the committee is a fair and just price for the same, and in view of all the circumstances the passage of the bill is recommended.

Letters from the Secretary of the Interior, transmitting the treaty to the Senate, together with the letter from the Commissioner of Indian Affairs in relation to same, dated November 23, 1901, are herewith appended.

Department of the Interior,
Washington, January 12, 1904.

Sir: I have the honor to acknowledge the receipt of your communication of the 15th ultimo, inclosing for report the bill H.R. 50, introduced by Mr. Burke, of South Dakota, "To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect."

In reply, I transmit herewith a copy of a report on the matter by the Commissioner of Indian Affairs, dated the 9th instant, in which after discussing the provisions of the bill, and referring at some length to the unsuccessful efforts of the Department to secure a new agreement with the Indians for the cession of the lands in question along the lines proposed in S. 7390 of the last session of the Fifty-seventh Congress (which bill failed of passage), the Commissioner suggests that the bill (H.R. 50) should be so amended as to insure to the Indians an average price of not less than \$2.50 per acre for the lands ceded by them; also that the provision in the bill authorizing the Secretary of the Interior, in his discretion, to grant

extensions of time to settlers within which to make their payments (line 25, p. 7, and lines 1, 2, and 3, p. 8) should be entirely eliminated.

I have the honor to especially invite the attention of the committee to the remarks of the Commissioner on these points, which are fully concurred in by me.

No objection will be offered to H.R. 50 if modified and amended as suggested.

Very respectfully,

E.A. Hitchcock, *Secretary*.

The Chairman of the Committee on Indian Affairs, House of Representatives.

Department of the Interior,
Office of Indian Affairs,
Washington, January 9, 1904.

Sir: The Office has the honor to acknowledge receipt, by reference from the Acting Secretary of the Interior, for report, of a letter dated December 15, 1903, from Hon. J. S. Sherman, chairman of the House Committee on Indian Affairs, with which he transmits a copy of H.R. 50, Fifty-eighth Congress, first session, providing for the ratification and amendment of the agreement with the Rosebud Indians in South Dakota, upon which he states he would like to have a report from the Department.

Reporting upon this bill, the Office deems it proper at the very outset to invite attention to the fact that the same proposes to open the surplus lands of the Rosebud Indians, situated in Gregory County, for public settlement and dispose of the same without the consent of the Indians to the terms thereof.

The bill has been compared with and found to be similar to S. 7390, Fifty-seventh Congress, second session, upon which the office made a report under date of February 25, 1903, with the exception that the fifth section of said S. 7390, which provided that the agreement as amended should take effect only upon acceptance thereof and consent thereto by the Rosebud Indians, is omitted in said H.R. 50.

The essential features of the bill now in hand, aside from the omission of the provision that the same shall be effective only when accepted by the Indians, are as follows:

(1) Instead of paying the Indians a lump sum of \$1,040,000 for the surplus Gregory County lands, as provided in the agreement of September 14, 1901, it is proposed to dispose of the lands to settlers under the provisions of the homestead and town-site laws, excepting sections 16 and 36, or the equivalent thereof, at not less than \$2.50 per acre, the proceeds arising from such sale to be paid to the Indians in the manner provided for in said agreement.

(2) Sections 16 and 36 in each township, or their equivalent, are to be reserved for the use of the common schools of South Dakota and are to be paid for by the United States at the rate of \$2.50 per acre. The selections are to be made prior to the opening of the lands to settlement.

(3) Of the proceeds arising from the sale of the lands ceded, the sum of \$250,000 is to be expended in the purchase of stock cattle, which are to be issued to the Indians as equally as possible, it being provided, however, that not more than half the money received in any one year shall be thus expended. The other half is to be paid to the Indians per capita in cash. The payments are to be paid in the month of December of each year until

all the lands are fully paid for and the funds disbursed among the Indians.

(4) The homestead settlers entering said lands are to pay for the same at the rate of \$2.50 per acre, of which money 50 cents per acre is to be paid at the time of entry and 50 cents per year during the next four years until the total amount is paid up. If the entryman fails to make any of the payments within the right time required, it is provided that all of his rights shall cease and his entry shall be held for cancellation, unless the Secretary of the Interior excuses the failure to pay after good cause is shown.

(5) All the lands remaining undisposed of to homestead settlers at the expiration of four years are to be sold at public auction, to the highest bidder for cash, under regulations to be prescribed by the Secretary of the Interior, in tracts not exceeding 160 acres to any one person, at not less than \$2.50 per acre.

(6) The last section of the bill stipulates that the United States shall act only as trustee for said Indians in disposing of the lands and in expending and paying over the proceeds derived from their sale, and that the Government shall not be bound in any manner to purchase any of said lands, excepting sections 16 and 36, or to dispose of the same otherwise than as proposed in the bill, or to guarantee to find purchasers for the same, or for any portion thereof.

The propositions of the bill as above set forth, it will be noted, differ most materially from the provisions contained in the agreement of September 14, 1901, which stipulated for the purchase of the lands ceded by the United States for the lump consideration of \$1,040,000. Senate bill No. 7390, Fifty-seventh Congress, second session, already referred to, was similar to the bill now in hand with

the exception, as indicated above, that section 5, which provided for the acceptance and consent of the Indians to the terms proposed, is now eliminated and stricken out. Under date of February 25, 1903, the Office reported upon said S. 7390, and stated that in view of the fact that the same contained provision for the consent of the Indians to the bill before it should become binding, the Office would interpose no objection thereto.

The bill was not, however, passed by Congress, and during the past summer, at the request of the entire South Dakota delegation in Congress, an effort was made to conclude a new agreement with the Indians of the Rosebud Reservation for the cession of the lands in question along the lines contained in said S. 7390. Draft of instructions for the guidance of the United States Indian inspector, James McLaughlin, in the conduct of negotiations for such agreement were prepared by this office, dated June 30, 1903, and approved by the Department July 3, 1903.

Under date of August 31, 1903, Inspector McLaughlin reported his failure to conclude an agreement with the Indians on the terms proposed. His negotiations with the Indians and his journey over the reservation for the purpose of securing signatures from the Indians cover a period of about six weeks, as shown by his report. He stated that the Indians were unanimous in refusing to assent to the bill as presented to them, the main opposition, as shown by the proceedings of the several councils, being based upon the statements that the lands in question are worth more per acre than the amount proposed to be paid to them therefor. After making some material modifications in the terms of the agreement, which would result in the procurement for the Indians of a larger price for their lands, the inspector succeeded in

getting a majority of the signatures of the 125 Indians present at the council. The additional signatures were obtained by visits to the several camps until a total of 737 signers had been procured. While this was 48 more than half the male adult Indians of the reservation, it still lacked 296 of the required three-fourths majority.

One of the modifications made by the inspector in the agreement as signed was that settlers on the lands entered as homesteads should pay therefore at the rate of \$2.75 per acre instead of \$2.50, as proposed in the bill. The amount which the Government was to pay, however, for sections 16 and 36 was left at \$2.50 per acre, as in the original bill. This the inspector considered to be just and equitable, for the reason that the school lands would be paid for by direct appropriation of Congress and would be immediately available upon the ratification of the agreement, whereas the homestead tracts would be paid for in six installments running for a period of five years.

Another modification made was to the effect that the lands remaining undisposed of to homestead settlers at the expiration of four years should be disposed of at public auction in tracts not exceeding 160 acres, without restriction as to the number of tracts that might be purchased by any one bidder. This modification the inspector thought would result in the sale of some of the rougher and less desirable tracts to ranchmen as ranges, whereas they would not be bought by individual purchasers in 160-acre tracts.

A careful reading of the council proceedings, which were quite prolonged, and full transcripts of which the inspector transmitted with his report, discloses the fact that the main objection of the Indians to the proposition submitted was that the price to be received by them for their lands was

inadequate and that it would not even guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, and with the additional uncertainty that the payments by the settlers might not be made at all.

When the agreement of September 14, 1901, was being concluded the Indians argued with great persistency that their lands were worth more than \$2.50 per acre, and they were almost unanimous in declaring that they were well worth \$5 per acre. Since that time several petitions have been received from the Rosebud Indians earnestly protesting against the ratification of said agreement because of the inadequacy of the compensation. Letters from outside and apparently disinterested parties were also received indicating that the lands were worth a considerably larger price than that agreed to be paid. In fact, one offer was made by parties to take all the lands covered by the cession at the rate of \$5 per acre. On this point the Office seems warranted in saying that from the best information it has been able to obtain a considerable portion of these lands is worth perhaps two or three times the amount proposed to be charged to homestead settlers therefor, and that no doubt the entire tract taken as a whole, exclusive of the allotments, is worth considerable more than \$2.50 per acre.

The Indians can not see, as indicated in their talks and councils and as reported by Inspector McLaughlin, why they should not procure such price for the lands as settlers are willing to pay for them. The Indians in their talks have shown themselves to be not unreasonable in their demands, but simply persisted in demanding what they believed to be just and proper. In fact, many of the Indians during the councils last summer indicated that if the propositions under consideration would

guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, that they would not oppose the same. They felt, however, that there was no certainty that they would realize even \$2.50 per acre for the lands proposed to be ceded.

The proposition now made, as contained in said H.R. 50, evidently rests on the assumption that the consent of the Indians to the cession of the lands in question on proper terms can not be procured, and that therefore the lands must be disposed of, if at all, without the consent of the Indians. There is no doubt but that such action by Congress is warranted under the decision of the Supreme Court in the case of *Lone Wolf v. Hitchcock*, handed down on January 5, 1903 (187 U.S., p. 553).

So far as the treaty relations of the Indians with the United States are concerned, the status of the Rosebud Indians is almost identically similar to that of the Kiowas, Comanches, and Apaches, whose treaty was under consideration in the *Lone Wolf* decision. Article 12 of the treaty of April 20, 1868, with the Sioux tribe of Indians (15 Stats. p. 635), contains the following provision:

"No treaty for the cession of any portion or part of the reservation hereon described, which may be held in common, shall be of any validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same," etc.

Although the Kiowa Indians had entered into treaty stipulations with the United States similar to the foregoing, the court, in the *Lone Wolf* case, held that the contention that the Indians could not be divested of their tribal property without their consent was untenable, and that the power of

Congress to abrogate the provisions of an Indian treaty had always existed. The court said:

"To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency, when the necessity might be urgent for a partition and disposal of the tribal lands of all power to act if the assent of the Indians could not be obtained."

It was further held that plenary authority over the tribal relations of the Indians had always been exercised by Congress, and that the power to do so has always been deemed a political one, not subject to be controlled by the Judicial Department of the Government. This power, in the opinion of the court, is a necessary one from the very nature of the relation sustained by the Government toward the Indians and its duty to protect its wards in all their relations.

Respecting the exercise of its power in dealing with the property and other interests of the Indians the court said:

"The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians."

Whether or not the case in hand respecting the Rosebud Indians is such as to justify Congress in disregarding the treaty stipulations, and in opening up and disposing of the lands without the consent of the Indians, is one that must be left to the judgment and wisdom of Congress to determine.

As a general proposition the Office has to say that after careful and mature consideration it is of the opinion that the time has come when Congress and the Indian Department are warranted in administering the tribal interests of the Indians in the United States, including the matter of disposing of such of their lands as they do not need and do not use, without consulting the Indians affected in reference thereto.

It must be assumed, of course, in the adoption of any such policy that those charged with the duty of administering the affairs of the Indians will act in every instance in perfect good faith, and will see that the rights and interests of the Indians are fully preserved and enforced. If, therefore, the bill in hand is to be enacted into law, it is respectfully submitted that the same should be so amended as to insure the procurement to the Indians of an average price of at least \$2.50 per acre for all the lands in question.

The Office is convinced not only that the lands in question are well worth the price indicated as a whole, but that the bill as it now stands will not secure for the Indians the price named. Necessarily a considerable portion of the lands will not be disposed of under any conditions at \$2.50 per acre. In order therefore to procure this price for the whole the better lands must be sold for more than the price fixed in the bill.

Another feature of the bill which the Office is positively of the opinion should be changed is that contained in line 25, page 7, authorizing the

Secretary of the Interior, in his discretion, to grant an extension of time to the settler for good cause within which to make his payments. This provision, or any provision authorizing the extension of time to the settler, should be entirely eliminated and omitted, and the Office so recommends.

From ample experience gained in similar provisions in the past the Office feels justified in stating that if the privilege of deferring payments is extended to settlers for any cause that requests for such extensions will be made and multiplied by them until it will become next to impossible to secure payment at all. If the plan of disposing of the Indian lands now proposed is to be adopted, it is respectfully submitted that good faith toward the Indians requires that the payments of the settler shall be absolutely and promptly made, and that there shall be no default whatever. If this be not insisted upon at all times and in every case by Congress and the Indian Department, then there can be no assurance that the Indians will receive for their lands the sum intended to be procured for them and the amount that will be necessary in order to bring them adequate compensation for their lands.

With the modifications and amendments to the bill as above recommended, the Office is of the opinion that the interests of the Indians will be fully conserved and that reasonable compensation will be secured for them for their lands. If so amended, therefore, the Office will interpose no objection to its enactment into law.

The letter of Mr. Sherman and the accompanying bill are herewith returned, and a copy of Office report is inclosed.

Very respectfully,

W.A. Jones,
Commissioner.

The Secretary of the Interior.

Department of the Interior,
Washington, December 6, 1901.

Sir: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated the 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully, E.A. HITCHCOCK
Secretary.

THE PRESIDENT PRO TEMPORE UNITED STATES
SENATE.

Department of the Interior,
Office of Indian Affairs,
Washington, November 23, 1901.

Sir: The Office has the honor to acknowledge the receipt of a letter, dated October 11, 1901, from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement, dated September 14, 1901, with the Indians of the Rosebud Reser-

vation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the Office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to that end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the lands opened up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The Office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 9, 1901, a draft of instructions was prepared by this Office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the

Department on March 21, 1901, and Inspector McLaughlin detailed for the duty of conducting negotiations.

In his report, dated October 5, 1901, the inspector states that he arrived at the Rosebud Agency on April 2, 1901, for the purpose of entering upon negotiations with the Indians, and that upon his arrival it was ascertained that smallpox was prevalent on the reservation, wherefore he deemed it inadvisable to assemble the Indians in general council. He states, however, that he made a trip to the Ponca Creek district, which is in Gregory County, about 100 miles east of the agency, for the purpose of conferring with the Indians there who would be the most affected by the cession, and for the purpose of traveling over that portion of the reserve and securing a knowledge of the lands whose session it was proposed to secure.

Negotiations having been postponed at that time, with the approval of the Department, the inspector states that he proceeded to carry out orders elsewhere, and returned to the Rosebud Agency on August 28 last and at once entered upon negotiations which, though somewhat protracted and at times discouraging, he says have been satisfactorily concluded.

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 73 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existing statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated, September 14, 1901, and contains the signatures of James McLaughlin, United States Indian inspector, and of 1,031 male adults Indians of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement to the effect that the provisions thereof were fully explained by them to the Indians in open council, that it was fully understood by them before signing, and that the signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Another certificate is attached to the agreement, dated October 4, 1901, by Frank Mullen, agency clerk, and by C.H. Bennett, John Sullivan, Frank Robinson, Frank Sypal, Isaac Bettelyoun, and James A. McCorkle, farmers of the several districts of the reservation, and Louis Bordeaux, ex-farmer of the agency district, to the effect that they witnessed the signatures of United States Indian Inspector McLaughlin and of the 1,031 Indians of the Rosebud Agency to the agreement.

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three-fourths of the male adult population of the reservation.

Respecting the terms of the cession, Inspector McLaughlin states in his report that he was greatly handicapped in the beginning by the fact

that most of the Indians who favored a cession at all held the lands at an enormous price—from \$7 to \$15 per acre; that only a very few expressed their willingness to accept as low as \$5 per acre, and this in cash and all in one payment; that upon his arrival all the white men connected with the agency, as well as those of the surrounding country with whom he talked, held the lands in question as worth \$5 per acre; that it appeared that adjacent lands in Gregory County and in Hoyt County, Nebr., were selling at from \$5 to \$10 per acre; that a syndicate of cattlemen in Sioux City, Iowa, expressed its willingness to pay \$5 per acre for the entire tract, and that these current rumors and fictitious values placed upon the lands which were circulated among the Indians exercised them very much and had to be overcome by reasoning, which required time and a great amount of patience.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that whilst he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased, whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached.

The inspector refers to the minutes of the council proceedings transmitted with his report as showing the numerous questions raised by the Indians and his answers to their contentions; also,

as showing that he finally convinced a number of the leading men of the wisdom of cooperating with him in formulating an agreement.

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land, and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek Day School, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 398.67 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years, will aid the Indians materially in providing for their family needs during that time, after which the

matured cattle, the increase from the stock issued to them, will be marketable and will, with proper care, give them an annual revenue thereafter. The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indians accept such provisions, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could not be made. The Indians insisted for a long time upon having the entire \$790,000 paid to them in cash in one payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

The inspector transmits with his report a map, prepared by Special Allotting Agent W.A. Winder, of the portion of the reservation proposed to be ceded, which shows the several Indian allotments therein, with the names of the allottees, and also the unallotted portions; also a package of correspondence had with the State authorities of South Dakota relative to the boundaries of Gregory County, and the description of the eastern portion of the reservation.

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians would accept; that the stock cattle and the five

annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement.

The agreement appears to be properly executed and in form for acceptance and ratification by Congress. It is deemed proper in this connection to refer especially to the provisions of article 4, which are evidently intended to fix the status of mixed-blood Indians upon that reservation, and to insure the undisturbed residence thereon of white men intermarried with the Indians. It does not appear that this provision extends to mixed bloods as a class any rights or benefits that they did not have before, unless possibly to secure rights to children born of a marriage since the enactment of the provision contained in the Indian appropriation act of June 7, 1897 (30 Stat., p. 62), which reads as follows:

"That all children born of a marriage heretofore solemnized between a white man and Indian woman by blood and not by adoption, where said Indian woman is at this time, or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior act of Congress shall be construed as to bar such child of such right."

Respecting the residence of white men intermarried with Indian women, it may be proper to state that this right has always been extended in such cases and permitted so long as the conduct of such white men on the reservation is not detrimental to the peace and welfare of the Indians. The Office sees no serious objection to the embodiment of this article in the agreement.

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this Office and from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the amount necessary to carry the provisions of articles 2 and 3 of the agreement into effect.

The matter of the disposition of the land ceded is one properly for the Department and the Commission of the General Land Office to arrange. It is suggested that such disposition may be provided for by the addition of another section to the draft of the bill inclosed. In this connection it is suggested that the section added should provide for the disposition of the lands ceded, "excepting such tracts as may be reserved by the President, not exceeding 398.67 acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions."

Besides the draft of the bill in duplicate, there are transmitted herewith two copies of the agreement, two copies of the council proceedings, two copies of correspondence had by Inspector McLaughlin with the State authorities of South Dakota respecting the boundaries of Gregory

County, two blue prints of map, and two copies of this report, with the recommendation that one copy of each be transmitted to the Senate and House of Representatives, respectively, with request for favorable action on the agreement.

The original agreement and papers accompanying the same are transmitted herewith, with the request that they be returned to the files of this Office when the same shall have served their purpose.

Very respectfully, your obedient servant,

W.A. Jones, *Commissioner.*

The Secretary of the Interior.

[#15D]

(Senate document concerning H.R. 10418)

[S. Doc. No. 158, 58th Cong. 2d Sess. 1-7 (904)]

ROSEBUD INDIANS OF SOUTH DAKOTA.

Mr. COCKRELL presented the following

MEMORIAL OF THE INDIAN RIGHTS ASSOCIATION, ON BEHALF OF THE ROSEBUD INDIANS OF SOUTH DAKOTA, RELATING TO THE PROPOSED SALE OF 416,000 ACRES OF THE LANDS OF THEIR RESERVATION.

February 15, 1904.—Referred to the Committee on Indian Affairs and ordered to be printed.

Agency of the Indian Rights Association,
Washington, D.C, February 15, 1904.

A memorial of the Indian Rights Association on behalf of the Rosebud Indians, of South Dakota, relating to the proposed sale of 416,000 acres of the lands of their reservation, showing that in fairness and good conscience the price proposed to be paid them by the bill H.R. 10418 is inadequate, and petitioning that justice may prevail.

To the Congress of the United States:

On behalf of the Rosebud tribe or band of Sioux Indians, of Rosebud Reservation, S. Dak., and at their

request, we appeal for a hearing of the claims of these Indians; that they will suffer great injustice if the bill H.R. 10418, now pending before the Senate, be enacted into law.

Briefly, the bill proposes to dispose of 416,000 acres of the Rosebud Indian lands lying in Gregory County, S. Dak., without Indian consent, at prices ranging from \$3 per acre downward, according to date of purchase, etc., the Government acting only as trustee for the Indians, especially providing that it does not guarantee any part of the purchase price.

The bill sets up an agreement secured from the Indians in 1901, wherein the latter were guaranteed \$1,040,000 for these lands by the Government (being \$2.50 per acre).

The Supreme Court of the United States while deciding (Lone Wolf case, October term, 1902) that Congress was vested with authority to disregard treaties made with our Indian tribes, presupposes that in our dealings with the Indians absolute justice will be done them. The court says:

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty, but may demand, in the interest of the Government and the Indians themselves, that it should do so, * * * It was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians.

We must presume that Congress acted in perfect good faith in the dealings with the Indians, * * * and that the legislative branch of the Government exercised its best judgment in the premises.

The Congress having assumed absolute control, by guardianship, of the Indians, it must accept the added responsibility of providing for absolute justice to these wards.

If an obligation of the Government entered into with the Indians may be broken at will by reason of incapacity of the ward, we can not in justice nor good conscience hold the ward to an admission in a former agreement as to the value of lands. Furthermore, the agreement set up in the bill is alleged to have been secured through strenuous effort. The Indians claim they were given to understand that the Government would take their lands anyway at the Government price, \$1.25 per acre, if they did not agree to accept \$2.50 per acre.

As already stated, it is not necessary to dwell upon the history surrounding the agreement of 1901. Congress proposes to disregard it in important particulars by withdrawing its guaranty of payment of the purchase money, and resolving the Indians to the uncertain payment of settlers upon the lands, who, upon becoming delinquent, usually appeal to Congress for extension of the time of payment, and indeed for the remission of the debt. This plan in the past has been found to result sometimes in frittering away the Indian estate.

In brief, the agreements are held not to be binding upon the Government, and therefore the Indians, as the other contracting party, are fully released.

To set up the agreement of the Indian tribe, therefore, in the bill is useless and can not be otherwise than misleading. The question resolves itself to this: What is the actual value of the land proposed to be sold by the guardian Government?

Reuben Quickbear, president of the Rosebud Indian Council, writes as follows:

Rosebud, S. Dak., *January 18, 1904.*

Dear Sir: I suppose you know that Mr. Burke's bill taking our Gregory County land without our consent and at a merely nominal price is now in the hands of Mr. Sherman, chairman of the House Committee on Indian Affairs.

If ever we needed help we need it now, and badly. Mr. Clark, the Episcopal missionary here, has written to Mr. Sherman protesting against the amount offered—or rather thrust at us—for the land. He has been here for years and knows the value of it. A real estate man recently went over it and told a friend of mine that he would gladly give \$10 an acre for the whole tract, and could raise the money in three weeks. Over a year ago a syndicate offered the Commissioner \$5 per acre for the whole tract, and land around here has since doubled in value. We only ask \$5 per acre.

We call on the Indian Rights Association to help us in this our hour of need, and ask you to protest to Mr. Sherman against the passage of this unjust bill.

Ask that three men be appointed to value the land—one to be appointed by the Commissioner of Indian Affairs, one by the Indians, and these two to select a third, as was done when the Omaha Reservation was valued years ago. If this proposal is entertained the South Dakota delegation will at once consent to \$5 per acre, as they well know that any halfway fair valuation would be far more than that. A shyster lawyer named Backus is in Washington stating that our land is not worth more than \$2.50 per acre. He lives in Bonesteel, in Gregory County, and has been sent by the people there to help beat us in this land deal.

Yours, truly, Reuben Quick Bear,
President of the Indian Council.

Mr. Herbert Welsh, *Philadelphia, Pa.*

As shown by the report (dated January 9, 1904) of the honorable Commissioner of Indian Affairs, on the bill in question, the Indians were not satisfied with the price offered them. He states:

When the agreement of September 14, 1901, was being concluded, the Indians argued with great persistency that their lands were worth more than \$2.50 per acre, and they were almost unanimous in declaring that they were well worth \$5 per acre. Since that time several petitions have been received from the Rosebud Indians earnestly protesting against the ratification of said agreement because of the inadequacy of the compensation. Letters from outsiders and apparently disinterested parties were also received indicating that the lands were worth a considerably larger price than that agreed to be paid. In fact one offer was made by parties to take all the lands covered by the cession at the rate of \$5 per acre. On this point the Office seems warranted in saying that from the best information it has been able to obtain a considerable portion of these lands is worth perhaps two or three times the amount proposed to be charged to homestead settlers therefor, and that no doubt the entire tract taken as a whole, exclusive of allotments, is worth considerably more than \$2.50 per acre.

The Sioux City Journal (Sioux City, Iowa) of July 2, 1903, regards the tract as comprising fine lands, and says:

ROSEBUD OPENING DUE SOON—MAJOR M'LAUGHLIN ABOUT TO MAKE TREATY WITH INDIANS—APPOINTMENT FOR J.D. KELLER—FORMER SUPERINTENDENT OF SCHOOLS OF WOODBURY COUNTY MADE

UNITED STATES COMMISSIONER AT BONE-STEEL, S. DAK.-TO TAKE ACTION NEXT SESSION.

Persons who have been interested in the opening of the Rosebud Indian Reservation in South Dakota will be encouraged by the news that the reservation will almost without question be thrown open to settlement after the next session of Congress.

Such action will be made possible by a new treaty with the Indians, which is to be made by Maj. James McLaughlin, of the Indian Department, Washington, D.C., who was in Sioux City this week, en route from Washington to North Dakota on business with the Indians.

The news of the new treaty was brought to Sioux City by Joseph D. Keller, of Bonesteel, S. Dak., of the real estate firm of Rathman & Keller, who is here for a brief visit with friends.

Mr. Keller formerly was county superintendent of schools for Woodbury County. Fourteen months ago he left Sioux City for Bonesteel, and has been doing well there.

"Major McLaughlin is now in North Dakota, attending a powwow of the Indians, with whom he has a strong friendship all over the Northwest. He is to go to the Rosebud Reservation in South Dakota and meet the Indians there. This is the primary object of his trip west," according to a letter which Congressmen Burke, of South Dakota, has received from Commissioner Jones, of the Indian Bureau.

"There are 416,000 acres of land on the reservation to be opened. Most of it is fine land. Not a mile and a half from the reservation boundary the other day we sold a quarter section to a Pierson, Iowa, man for \$5,000. So you see the land is not

bad. There will be 2,600 quarter sections to be allotted to settlers when the reservation is opened. We have received frequent inquiries about the land from all over the country.

"You see, Congress balked on the deal because it would necessitate an appropriation of \$1,500,000 to buy the land from the Indians and the purpose of the new treaty will be to make a deal by which the Indians will wait a certain length of time for their money, which the settlers will pay in in proving up, instead of looking to the Government for it."

Mr. Keller has just been appointed United States commissioner at Bonesteel, his jurisdiction extending over Gregory County and a large stretch of country west of that county. By virtue of his official position he probably will be given charge of the drawing by settlers for the Rosebud lands when the reservation is opened.

Bonesteel, S. Dak., lies on the border of the Indian lands referred to. A circular issued by a Bonesteel land company shows conclusively their opinion as to the value of lands in that section of the country. It read as follows:

Rosebud Indian Reservation.

Four hundred and sixteen thousand acres of choice lands to be thrown open to settlement under the homestead laws.

While the date has not been determined definitely, it is generally conceded by those in a position to know, that the drawing will be held in Bonesteel in the early summer of 1904.

Those wishing full information should send 50 cents for large sectional map showing entire county, also names of all allottees.

Briefly, stated, Gregory County is one of the best in the State of South Dakota, because—

First. The soil is heavier.

Second. The water is better.

Third. There is no surface stone.

Fourth. The rainfall is heavier.

Fifth. There has never been a failure of crops.

Sixth. Timothy and clover grow well here.

Seventh. This section of country is better adapted to the raising of hogs and cattle, as corn yields well each year.

Eighth. Land values are steadily advancing.

Ninth. The prospects for a bounteous harvest was never better in any country.

Tenth. We are in direct communication with both the Sioux City and Omaha markets.

Read descriptions and prices of land:

* * * * *

18. Ninety acres, choice farm land, $3\frac{1}{2}$ miles from town; frame house and good well. Price, \$35 per acre.

19. One hundred and sixty acres, $2\frac{1}{2}$ miles from town; good house, all fenced, 140 acres in crop. Price, \$26 per acre.

20. One hundred and sixty acres, 10 miles from town; 100 acres in crop, all fenced. Price, \$26 per acre.

21. One hundred and sixty acres, 7 miles from county seat; 135 acres in cultivation. Price, \$32 per acre.

22. One hundred and sixty acres, $2\frac{1}{2}$ miles from town; good farm land; 120 acres in crop, all fenced; good well, 18 feet deep. Cheap at \$35 per acre.

23. Three hundred and twenty acres, $1\frac{1}{2}$ miles from town; 250 acres in cultivation. Seven-room house, large, two-story barn. Price, \$36 per acre.

24. Three hundred and twenty acres, $3\frac{1}{2}$ miles from town; good soil and water; hay meadow cuts 70 tons per year; 210 acres in crop. Price, \$33 per acre.

25. One hundred and sixty acres, $2\frac{3}{4}$ miles from town; slightly rolling, but all good, tillable land; 80 acres cultivated. Price, \$19.50 per acre.

26. Three hundred and twenty acres choice, creek land, suitable for stock raising, 9 miles from town. Price, \$20 per acre.

27. Two hundred and fifty acres, 5 miles from town; 180 in crop, good well and stock pond, frame house, all fenced, one of our best. Price, \$26 per acre.

28. Stock ranch consisting of 2,355 acres deeded land and 640 acres of school land in a body, three streams of never-failing water, three windmills and tanks, buildings suitable for handling all kind of stock, 40 miles of fence. For particulars write us.

29. Four hundred and eighty acres, 6 miles from town; well watered and all fenced. Price \$20 per acre.

30. Three hundred and twenty acres, 1 miles from town; abundance of good spring water, excellent for pasture. Price, \$16.50 per acre.

31. One hundred and sixty acres, almost adjoining town; well improved, undoubtedly the best farm in Gregory County. Price, \$52 per acre.

32. Six hundred and sixty acres, 3 miles from town; 320 acres choice cultivated land, balance pasture, all fenced, plenty of good springs. Price, \$26 per acre.

33. One hundred acres, 3 miles from town; 120 acres in crop, 40 acres pasture, plenty of water. Price, \$31 per acre.

34. Three hundred and twenty acres rough land suitable for pasture, on the Whetstone Creek. This is a snap at \$7.50 per acre. (Sold.)

35. Three hundred and twenty acres, 4 miles from town; 70 acres can be broken, balance pasture land. School section adjoining leased for four years. Price, \$3,200.

36. One thousand six hundred acre stock ranch, improved and well watered; will sell cheap or take in part payment improved farm or stock of goods. For particulars and prices write us.

37. One hundred and sixty acres, 4 miles from town; 140 acres in crop, 20 acres pasture, no waste land. A great bargain at \$29 per acre. (Sold.)

38. One hundred and sixty acres, fine farm with good well of water; 110 acres in crop, only 1½ miles from town, only \$32.50 per acre. (Sold.)

39. One hundred and sixty acres, 1 mile from town; plenty of water, frame house, 80 acres in crop. Price, \$6,000. (Sold April, 1903, \$5,900.)

A recent issue of the Sioux Falls Press, Sioux Falls, S. Dak., has this to say of the pending bill:

BURKE'S ROSEBUD BILL.

Representative Burke, of South Dakota, favors the Press with a copy of his bill for the cession of a portion of the Rosebud Indian Reservation, in this State, and his report thereon from the House Committee on Indian Affairs.

This is a measure the Press has criticised in one particular—that the price per acre to the Indian owners of the land was not enough. In Mr. Burke's new bill the price is increased from \$2.50 per acre for all the land entered within six months after the opening of the reservation, the price thereafter to be reduced to \$2.50 per acre.

It is probable that all the land to be surrendered will be taken by settlers long before the first half

year has expired, as there is nowhere in South Dakota land more desirable than in this tract. So the new bill will give the Indians a couple of hundred thousand dollars more than was contemplated in his original measure.

When the inspector visited the Indians last summer to procure their consent to the sale of the land, they demanded \$5 per acre and refused to sign in sufficient numbers an agreement for its sale for anything less than that sum.

In the absence of the agreement it was expected at that time to procure from the Indians Mr. Burke has incorporated in his bill a previous agreement made with the Indians in September, 1901, in which they then consented to the sale of the property at \$2.50 per acre. This agreement was before the last Congress, and it failed to secure ratification, the managers of the House declining to consider it.

The Indians are not at all exorbitant in their demand for \$5 per acre. The land is worth more than that. A like measure, introduced by Representative Marshall, to provide for the opening of the Devils Lake (N. Dak.) Indian Reservation, is before the House. In the Indian committee it has been so amended as to provide, that the price of the land shall be \$4.50 per acre during the first six months, \$3.50 for the second six months, and \$2.50 thereafter. The Rosebud land is even more valuable than the Devils Lake land, being in a section adapted to mixed farming.

The C.A. Johnson Realty Company, of Bonesteel and Fairfax, S. Dak., have expressed themselves regarding values, claiming grazing lands are worth \$7 and farm lands from \$25 to \$40 per acre in their section, which

is adjoining the Indian lands of the Rosebud Reservation. Their statements follow:

January 23, 1904.

Dear Sir: As it is probable that the Indian lands in Gregory County will be open to settlement soon, we are thinking of investing some money in the lands in that country.

What will the average price of farm lands be? I have a friend who would like to purchase about 3,000 acres of grazing land.

Could he get that much in a body; and if so, what would be the price?

We will inclose a stamped envelope and will be pleased to hear from you as early as convenient.

Respectfully,

C. W. Beggs, Sons & Co.

Mr. C. A. Johnson Realty Company,
Bonesteel, S. Dak.

Fairfax, S. Dak., January 26, 1904

Gentlemen: Your esteemed favor of January 23, 1904, has been received, and in reply will say that 3,000 acres of land for grazing purposes can be obtained here in this county for about \$7 per acre. The farm land is much more valuable and higher priced. Farm land is worth from \$25 to \$40 per acre.

The new homestead bill, which has recently been introduced by Congressman Burke, of South Dakota, provides for opening about 416,000 acres of land in that portion of this country which is yet an Indian reservation. This bill has not become a law as yet, but if it does it will provide for paying \$3 per acre for the homestead as soon as

the land is opened for entry and \$2.50 per acre if filed upon after the expiration of six months from the date the land is opened for entry. The bill also provides that after the expiration of four years from the date the land is opened for filing that a party can purchase all the land that is vacant at that time that he wishes, subject to the rules and regulations of the Department of the Interior.

Hoping to hear from you further in this matter, I beg to remain,

Yours, truly,

C. A. Johnson Realty Company,
Bonesteel and Fairfax, S. Dak.

C. W. Beggs, Sons & Co., *Chicago, Ill.*

Confirmatory of the above, the following statement of Edwin M. Starcher, of Fairfax, S. Dak., is important:

January 23, 1904.

Dear Sir: We have a party in this city who is desirous of securing about 3,000 acres of land for grazing purposes in South Dakota, and as we understand that the land in Gregory County will soon be open for settlement, we would like to know what the average price of farm lands would be in that section and also if a 3,000-acre tract could be purchased by one party.

Thanking you kindly in advance for this information and inclosing stamped envelope for a reply, we are

With respect, C. W. Beggs Sons & Co.

Mr. E. M. Starcher, *Fairfax, S. Dak.*

January 27, 1904.

Gentlemen: To your favor of 23d instant beg to say that the average price of grazing lands in this country runs from \$5 to \$10 per acre. Improved farms from \$25 to \$40 per acre.

There are no very large tracts of land that could be purchased here at this time as nearly all the land has been homesteaded or preempted by settlers and usually is owned in tracts from 40 to 320 acres. The only way one could get 3,000 acres in a body would be to buy out several of the holders who adjoin each other. If we can be of service to you in any way shall be glad to do so. No doubt we can arrange with some of the larger cattle men who own adjoining ranches to sell. Such a sale would probably range approximately \$1,000 per quarter.

Yours, truly,

Edwin M. Starcher.

C. W. Beggs Sons & Co., *Chicago, Ill.*

Rev. A. B. Clark, a missionary among these Indians for a score and more years, believes that gross injustice will be done if the Indians are forced to accept the valuation provided for by the pending legislation.

Extract from the *Valentine Democrat*, Valentine, Nebr., issue of February 4, 1904:

The agent held a grand council yesterday (Monday, February 1) with the Indians and the result was that the Indians offered to lease their unallotted land for a term of years. On former occasions the Indians positively refused to lease, but they feel so sore at the action of the South Dakota delegation in trying to open their Gregory County land at a nominal price that they consented in order that no more of their land could be opened for several years at least.

By demoralizing the Indians in the matter of leasing we see the immediate evil results that tend in the wake of attempted unfair treatment. It has been shown by those observing the conditions, and is to be inferred by all experienced in Indian life in that portion of the Northwest that it is much better to encourage the Indians to pasture their surplus lands with stock owned by themselves rather than to lease the same to outsiders.

The Indians have united upon \$5 per acre as a compromise price, although they realize that the lands are more valuable.

Can the Government afford to commit so apparent and gross an injustice?

Respectfully submitted on behalf of the Indian Rights Association.

S. M. Brosius,
Agent Indian Rights Association.

[#16]

(Legislative history of S. 3779 — the Senate companion bill to H.R. 10418, which became the Act of April 23, 1904)

[38 Cong. Rec. 268 (1904)]

Rosebud Reservation: bills to ratify agreement with Sioux Indians on (see bills S. 3779; H.R. 10418).
 ——letter of S.M. Brosius relative to proposed sale of lands in (S. Doc. 158) 1975.

[38 Cong. Rec. 71 (1904)]

S. 3779—

To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Gamble: Committee on Indian Affairs 1100.—Reported back adversely and indefinitely postponed (see bill H.R. 10118) 1877.

[38 Cong. Rec. 1100 (1904)]

BILLS AND JOINT RESOLUTION INTRODUCED.

* * *

Mr. GAMBLE introduced a bill (S. 3779) to ratify and amend an agreement with the Sioux tribe of

Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect; which was read twice by its title, and referred to the Committee on Indian Affairs.

[38 Cong. Rec. 1877 (1904)]

Mr. GAMBLE. I am directed by the Committee on Indian Affairs, to whom was referred the bill (S. 3779) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect, to report adversely thereon, and recommend that the bill be postponed indefinitely, a House bill for this purpose having been reported favorably by the same committee.

The bill was postponed indefinitely.

[#17]

(House debate concerning the Indian appropriations bill giving history of Congressional dealings w/Rosebud Sioux)

[38 Cong. Rec. 2827-2832 (1904)]

Mr. BURKE. Mr. Chairman, before proceeding to what I have risen to talk about, I want briefly to refer and supplement what the gentleman from New York, the chairman of the Committee on Indian Affairs, has said with reference to the Indian appropriation bill which is now before this committee for consideration. As was stated by the chairman, the bill has had most careful consideration by the committee, every line and every item of the bill having been considered, discussed, criticised, and scrutinized by the whole committee in a series of meetings covering some two or three weeks of time.

I wish to say, Mr. Chairman, as was stated by the chairman, that the estimates made by the Department have not been exceeded except in an amount of something like \$178,000, and the items making this increase were all recommended by the Department by either a special communication or by the head of the Bureau appearing before the committee in person. I also want to say that the increase over the estimates are all upon the item of schools. We have reduced the estimates of the Department in other respects, but have increased a little the appropriations for schools. I want particularly to emphasize this fact and to call attention to the item in the bill, which is \$3,571,198, that we appropriate for the support of the schools and the education of the Indians. Out of \$7,610,000 appro-

priated by the bill considerably more than half of it is for education.

I want also to say, Mr. Chairman, as was stated by the gentleman from Texas yesterday, that since the early history of this country we have appropriated and expended for the civilization, support, and education of the Indians of this country over \$700,000,000.

Now, Mr. Chairman, what has prompted me to ask the indulgence of this committee at this particular time grows out of the fact that recently this House passed a bill—namely, H.R. 10418—in relation to the ratification and amendment of a treaty made with the Rosebud Indians in South Dakota, by which the Indians propose to cede to the Government 416,000 acres of land. The bill I refer to was introduced in the House by myself. It was considered by the Committee on Indian Affairs, as the Indian appropriation bill was considered, in several hearings, and was considered and discussed fully in the committee, because the bill proposes what will become, if it should be enacted into law, a new policy in relation to dealing with the Indians in regard to extinguishing their title for lands which they may have in their reservations for which they have no use. In other words, if this bill should finally become a law, it will be the pioneer bill for subsequent legislation that may be proposed to be enacted upon this subject. Mr. Chairman, the bill was unanimously reported by the Committee on Indian Affairs, was taken up and considered in this House without any opposition appearing from any source, and passed, and went to the Senate.

In the Outlook of February 27, 1904, there appeared an article entitled "Indian lands and fair play."

It will be found on page 498 of the Outlook of Saturday, February 27, 1904. I am not going to take the time, Mr. Chairman, to read that article. It was

written by a gentleman of considerable reputation, one George Kennan. I believe it is well known that something like fifteen or twenty years ago Mr. Kennan went to Russia, and that he contributed a number of articles upon the subject of "The Russian exile system" that attracted some attention, and at that time made him a reputation. I also understand, Mr. Chairman, that the nature of his writings were such that he was invited out of Russia and has not been permitted to return to that country.

Since his return to the United States he has occasionally been heard from in articles condemning some policy proposed by some Department of the Government, and has invariably taken a position "agin the Government," and I understand he has very recently departed for Japan. And if he makes good his reputation of being against the country within which he may be at the time, I presume his writings will be against Japan, and we can therefore expect his early return to the United States by the invitation of the aforesaid country, as he was invited to leave Russia.

In any event, as I have said, Mr. Kennan is a man of some reputation and may have been thoroughly posted upon the subjects that he has heretofore written upon, but any man familiar with H.R. 10418 and the Indian question generally will say that when he wrote the article published in the Outlook, to which I have alluded, he demonstrated that he did not know anything about the subject. Upon that article the Outlook comments editorially as follows:

Mr. Kennan, on another page, gives a dispassionate and striking account of the latest attempt to rob the Indian wards of the nation. While this robbery was undoubtedly instigated and planned in South Dakota, unfortunately Congress and the

Interior Department were made—although perhaps unconsciously—accomplices before the fact. We may, perhaps, venture to say that this piece of gross injustice to the Indians was brought to the attention of the President through the instrumentality of the Outlook, and owing to its personal indignation at the mean bargain the swindle has been blocked.

It is fair, on the one hand, to say that the Secretary of the Interior and the Indian Commissioners are personally not in the slightest degree involved in the proposed corrupt sale, but that they have yielded to the political pressure which is so constantly brought to bear upon administrative officials by members of the legislative branch of the Government.

Then it goes on (I will quote the whole article) and says further:

But, on the other hand, it should be remembered that the Indian Commissioner and the Secretary of the Interior are put in their respective places to do exactly the things they have not done in this case, to advise with regard to legislation as experts and to block, in so far as they can, legislation which is either dishonorable or unwise, as it may touch their own Departments, etc.

I do not wish to comment specially upon that last paragraph which I have read, but I do not think any man in the House of Representatives will say that it is the duty or the province of any Department to interfere with legislation that Congress might conclude to enact into law simply because the Department might deem it unwise and undesirable.

The editorial concludes as follows:

For them to plead, as in this case they have done, that they approved bills regarding the

Indians which they deemed not only to be unwise, but unjust, and possibly even dishonest, because of political pressure, is like saying that nobody is to blame for the explosion of the boiler because the metal was not strong enough to resist a steam pressure which the boiler had been expressly manufactured to resist.

Following that article, the Indian Rights Association, an organization, I believe, existing in Philadelphia, a self-appointed guardian of the rights of the Indian, supported, I presume, largely by the contributions of people who may be actuated by sentimental motives, and who are ready to believe that the poor Indian is being robbed and is being outraged by the white man and by the General Government, issued a pamphlet signed by Mr. Phillip C. Garrett, president of the Indian Rights Association, dated Philadelphia, February 29, 1904, and headed "Another Century of Dishonor." I will only read the first paragraph of this pamphlet, which is as follows:

We appeal for justice on behalf of the Rosebud Indians of South Dakota, and insist that the Government, in taking their land without their consent in the capacity of guardian and under the guise of the law, shall not confiscate, three-fourths of its value, but should provide that the Indian owners receive reasonable compensation therefor.

Now, Mr. Chairman, one word in relation to the inconsistency of this Indian Rights Association. I find that about ten years ago a treaty was entered into between the Lower Brulé Indians and the Rosebud Indians in South Dakota by which the Lower Brulé Indians, or a portion of them, were to move onto the Rosebud Reservation. It was mutually agreed to by the Indians. It was desired and recommended by the De-

partment, but the Indian Rights Association protested and opposed that proposition on the ground that the land south of the White River, this particular reservation, was practically valueless, and yet in the pamphlet which they have now sent to many if not all the Members of the House they are trying to make it appear that this land is very valuable and that we are taking it away from the Indians at a price that is unreasonable and unfair.

Mr. Chairman, just a word as to why it was necessary to adopt a new policy in relation to extinguishing Indian title or right of occupancy in reservation lands that were no longer of any use to the Indians, and why it was that the treaty, made with the Rosebud Indians for the cession of that portion of their reservation located in Gregory County, was not ratified by Congress.

Heretofore it has been the policy to enter into a treaty with Indians, the Government stipulating and agreeing to pay in cash a certain price for the land to the Indians. Upon the ratification of a treaty, the land became a part of the public domain, and was disposed of under the homestead laws. It appeared that in many of these treaties a price was paid that was in excess of what the land was actually worth and that instead of the Indians being mistreated it was the Government that was being imposed upon, and it was declared by those in this House who are its leaders that hereafter no Indian reservations could be opened to settlement except on some plan by which the Government would not be obligated to pay the Indian for his right therein, but upon some terms by which the land would be disposed of by the Government and the proceeds paid to the Indians. In the language of our present distinguished Speaker, on the floor of the House in the Fifty-sixth

Congress, "When white man pays his money, Indian gets his money."

It was for the reasons stated that it became necessary to adopt the plan proposed in House bill No. 10418, and what the Indian Rights Association is condemning, and these other theorists and doctrinaires, is that it is not good faith, first, because it violates treaty stipulations heretofore made with the Indians and, secondly, the terms of the bill are not fair and just to the Indians.

In 1901 a treaty was made with the Rosebud Indians, signed by more than three-fourths of the male adult Indians, by which they agreed to cede to the United States 416,000 acres of their reservation, being that portion located in Gregory County. The United States in that treaty stipulated to pay to the Indians \$2.50 an acre for that land, or, in round numbers, \$1,040,000. When that treaty came to the House of Representatives it met with the opposition which I have just stated, and it became necessary, as I say, to find some other way by which the Indians might dispose of this land and the lands could become a part of the public domain and be occupied, settled upon, cultivated, and improved and made useful instead of lying there of no value to the Indians, without being used by anybody, unless it might be by some trespasser.

In the meantime the Supreme Court of the United States, in the case of Lone Wolf against Hitchcock, decided January 2, 1903, a case where the conditions, so far as the provisions of former treaties were concerned, were exactly identical. Article 12 of the treaty with the Kiowa and Comanche Indians was exactly the same as article 12 with the Sioux Indians in the treaty of 1868 and reaffirmed in the treaty of 1889, by which it was expressly provided that the Indians in the future

would not be deprived of any of their reservation lands except upon the consent and approval of three-quarters of the male adults. The Supreme Court, in the case just referred to, Congress having amended a treaty which had been made with the Indians, took up that question and decided it squarely, and perhaps for the first time in the history of the Government. They decided that Congress had the absolute right to legislate with the Indians and for the Indians as the Congress in its judgment might see fit, regardless of any treaty conditions or treaty stipulations that might have been entered into in the past, and that decision became the law and furnished an opportunity to enact legislation such as the present Rosebud bill does provide, if it is enacted, and we therefore proceeded to amend that treaty so that as the lands were disposed of the money should go into the Treasury and be paid out to the Indians.

The Indian Rights Association, that are protesting against this bill, and others who have been heard from in opposition to the same, do not say or make any reference to the fact that a treaty embodying substantially the provisions of this bill as it is at present, except that the price of the land was 50 cents an acre lower, was submitted to the Rosebud Indians last August, and the price of \$2.50 an acre was raised to \$2.75, and that forty-eight more than a majority of the Indians consented and approved of the same. So that, while not three-quarters, as the treaty provides, forty-eight more than a majority have said that they desired and were willing to sell the land upon the terms proposed, and for \$2.75 per acre, whereas the price they will receive if the bill becomes a law is \$3.00 per acre.

Now, just a word as to the policy which we have been pursuing so far as the Indian is concerned and his right to the reservations which they occupy. In the Fifty-sixth Congress there was a gentleman, a Member of the House, distinguished for long years of service, a man who was in every respect a statesman, a man who had made a study of the subject of the public domain, and on February 4, 1901, he spoke the words which I will now read. I want to say that I indorse what the gentleman said, and that I believe the law absolutely sustains the theory which he there sets forth. I quote, Mr. Chairman, from Hon. Galusha A. Grow, of Pennsylvania, as follows:

Mr. Grow. Mr. Speaker. I agree in part with the remarks made by the gentleman from Georgia [Mr. Maddox]. But the land that the Indian claims as his own has no property value unless it is cultivated. The basis of the free-homestead law that passed Congress was that the wild, uncultivated lands of the wilderness belonged to the man whose industry made it valuable to civilization by his labor. His title to ownership in such land is sealed in the sweat of his face as it moistened the soil he tilled. What right can these Indians or Indians anywhere have to land without cultivation? Running over lands with a bow and arrow or fishing rod does not give a man a title to land uncultivated and improved.

I am opposed to the whole policy of the Government that treats the Indian as the owner in fee of uncultivated land. How can he have more than a possession title simply by making moccasin tracks over it, with his bow and arrow. The Indian has no more right than a white man to the soil because he tramps over it. If he has, the agents of the Hudson Bay Company are just as much en-

titled to the great wilderness of the Northwest. They traversed it with shotgun and fishing rod and all the implements of a hunter's life as early as the Indian, or at the same time.

Why should the Government make a treaty with the Indian to buy his land, to which he has only possessionary title? The old policy was to make an arrangement for him to leave his present occupancy and to find a new home. It is well enough that the Government should make such arrangement with him. He leaves his old hunting ground and finds another. All the attachments he severs is the graves of his ancestors. But immigrating people do that all over the world. The sons born in New England to-day go forth and find new homes in the West, and stop only when they reach the shores of the mighty ocean.

This Government's policy inflicts a wrong on the Treasury of the United States in treating the Indian as owning in fee land which neither he nor the white man has any just title to without they apply labor to it in cultivation.

The Government should return to the old policy practiced for fifty years, paying the Indian tribes for moving from one place to another if his land is wanted for settlement. No matter what the Government pays for his consent to move, it is better than expelling him by shot and shell. But until he acquires the exclusive right to the soil by cultivation he has no property right to sell to anybody. The earth's surface, created by the Almighty for the support of the race, becomes individual property only by the application of man's labor in its cultivation.

Mr. Chairman, the theory that the Indian absolutely owns these reservations is nothing but a theory, and the sooner that Congress appreciates that this is the case

the better legislation, in my judgment, we can have for the best interests of the Indians. I find that in the earlier treaties made with the Indians it was never thought that the Indian owned the lands. He had a sort of aboriginal tenure, as it is termed—a mere right of occupancy.

I have been told that in Pennsylvania, the State where the Indian Rights Association makes its home, there was a treaty entered into with the Indians in the early history of that State by which the Indians ceded and surrendered quite a portion of lands which they occupied at a cost of \$5.28, which was expended for beads.

Mr. Chairman, we are told that the Indians own the land. I shall incorporate in my speech and put in the Record several decisions from the Supreme Court of the United States, which demonstrate beyond any question that all the Indian has in the reservation is a mere right of occupancy, and that he has no title and that the fee is in the Government, and that it and it alone can extinguish the Indian right of occupancy, upon such terms as Congress may determine.

At this point I desire to refer to the case of *Lone Wolf v. Hitchcock*, heretofore cited. A portion of said opinion I will append to my remarks and print in the Record.

I want to call particular attention to the language used in this opinion in relation to the Indian right of occupancy being as sacred as the right of the fee in the United States, and, referring to several decisions where it was so decided, the court says that in none of these cases was there a controversy between Indians and the Government, but the questions considered had relation to the nature of the property rights of the Indian, concerning the character and extent of such rights of

the Indian, concerning the character and extent of such rights as respected States or individuals.

I desire to refer to the cases of *Johnson v. McIntosh*, 8 Wheaton, 543, decided in 1823; *United States v. Cook*, 19 Wallace, 591, decided in 1873; *Buttz v. Northern Pacific Railroad*, 119 U.S., 55; *Beecher v. Wetherby*, 95 U.S., 517, and I will append and print in the Record extracts from these decisions and also an extract from an opinion by Attorney-General Cushing, 8 Opinions Attorney-General, 255, and I would emphasize one portion of this opinion and commend it to some of the Eastern States that are so inclined to be sentimental on the Indian question and fearful that he will not be justly treated. The language is as follows:

Finally, we of the older States of the Union, who had expelled or killed off most of our Indians or reduced them to a condition of hopeless pupillage, had now come to be extremely sensitive to the alleged wrongs of the same nature—that is, policy in imitation of ours—to which the younger States of the South were now subjecting their Indians.

From the opinions cited, and especially the decision in the *Lone Wolf* case, it is demonstrated clearly that the Indian is a ward of the nation and that the United States can legislate as the legislative branch may see fit for his best interests.

It has been claimed that this particular bill is a robbery, and it has been so denominated. I want to say that it provides that the land shall be opened to settlement and what is disposed of during the first six months shall be paid for at the rate of \$3 per acre. In this tract there are 452 tracts that have already been selected by the Indians as allotments. In other words, the Indians have gone first and selected as their allot-

ment one-fifth of the tract: and the Indians are just like white men—they have naturally selected the best tracts. That would be natural. So that the 416,000 acres represents only four-fifths of the tract that is located in Gregory County, a part of this reservation. On the north the land is joined by what was formerly a part of the great Sioux Reservation, where land is now open to settlement and can be had, if a man will go there and live on it for five years, for nothing; and if he commutes, he pays only 50 cents an acre. It is joined on the south by land in Nebraska, assessed at between \$1 and \$1.25 an acre. On the west is an Indian reservation extending 170 miles.

And I maintain that when we put the price at \$3 an acre, as we do in that bill, it is not only fair and just, but it is more, Mr. Chairman, in my judgment, than the land is worth to-day, and certainly as much as a man ought to be required to pay who goes there and is required to comply with the provisions of the homestead law, as he will have to do under the terms of this bill. I maintain, Mr. Chairman, that the only question to be determined is the price of the land, and that that is one entirely of judgment, and that in looking out for the interests of the Indians if we see to it that he gets as much as he would have gotten under the treaty which he made we certainly can not be accused of having mistreated him. It is the judgment of every man familiar with the conditions in that section of the country that the land will be disposed of under the provisions and terms of this bill, and that it will be paid for, and that the Indians will receive as much money as they would have received under the original treaty, and probably more.

Mr. Chairman, I want to refer to a treaty made with the Sioux Indians in 1868, and I want to read some of

the provisions. In article 11 of this agreement it appears that we paid the Indians a consideration, and here are some of the things that the Indians agreed to do:

They agreed to withdraw all opposition to the construction of railroads now being built on the plains. "Second, that they will permit the peaceful construction of any railroad in passing over their reservation as herein defined." "That they will not attack any persons at home or traveling, nor molest or disturb any wagon trains, coaches, mules, or cattle belonging to the people of the United States or to persons friendly therewith." "They will never capture or carry off from settlements white women or children; they will never kill or scalp white man, nor attempt to do them harm."

By article 2 of the treaty of 1877 it is provided: "They also consent and agree to the free navigation of the Missouri River."

Now, to say at this time because some years ago the United States, in order to control these then outlaws and savages—call them by any name you may—confined them within certain limits, which were called "reservations," that we gave them the lands seems to me absurd. Will anybody for a moment contend that that action was a conveyance for a consideration to the Indians of the fee in the land? I certainly think not, and, as I said before, I have cited some authorities showing that the reservation title, if you want to so term it, is of no greater value than the aboriginal tenure. Yet it is contended that these lands now belong to the Indians and that they should be disposed of not only for what they are worth in their present almost valueless, useless condition, but that they shall be sold so that the Indian will get what they are worth after they have been cultivated and improved and made valuable by the white man.

I say, Mr. Chairman, following the language of the distinguished gentleman from Pennsylvania [Mr. Grow], from whom I have quoted, that the value in this land should go to the man that gives it value. The Indians of this country have never contributed or done anything that has been recognized by which they have given any value to the lands of this country. These Indians have the right to take: Heads of families, 320 acres of land; children over 18 years of age, 80 acres of land.

Heads of families who desire to live on their allotments are entitled to the following: Fifty dollars in lieu of a house, two mares and one colt, two cows with calves, one farm wagon, one set double harness, one plow, one hoe, one ax.

I cite this simply to show how generously the Indian has and is being treated by the Government, and I have no hesitancy in saying that after having taken allotments as they have in the tract affected by the proposed bill, the land left, which is of no value as it is now, should be made a part of the public domain, and upon terms not only fair to the Indian, but upon terms fair and just to the man who may go there to make his home and cultivate it. The man who goes into that section of the country goes in there with a handicap of one-fifth of the land nontaxable for twenty-five years, and he has got to pay his proportionate increase of the expenses of that community for all that time.

These 452 Indian allotments are practically without value at present, whereas if the adjoining lands are settled upon and improved it will make them valuable, and they can also be rented so as to give the allotments a benefit; and this is a consideration of considerable importance to the Indians having the aforesaid allotments.

I wish to emphasize that in disposing of this land it is not proposed to sell anything more than the right to make a homestead entry, which is quite different from what it would be if a person could buy the land outright. Under the provisions of the homestead law the purchaser will be limited to 160 acres and will have to reside upon and cultivate the land, in accordance with the provisions of said law.

That the Department has always considered \$2.50 an acre, or \$1,040,000, a fair and just price for the land, I wish to read the following reports.

Commissioner Jones, in his report to the Secretary of the Interior on the original treaty, November 23, 1901, in which he recommended that the same be transmitted to Congress with the request for favorable action, among other things said, referring to the report of the inspector who made the agreement:

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land, and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards, the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands. * * *

In conclusion the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians

would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement.

The Commissioner further said:

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this office and from the best information obtainable, fair and reasonable.

The Secretary of the Interior, under date of December 6, 1901, in transmitting the treaty to the Senate, stated:

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable and the terms the best that could be obtained I have the honor to recommend that it receive favorable action by the Congress.

A gentleman of high standing, and a man who has been among the Indians for thirty years or more, and who was at first opposed to House bill No. 10418, after having it explained wrote me a letter, from which I quote as follows:

Philadelphia, Pa., *February 12, 1904.*

However, the material questions are: Is the proposed bill (H.R. 10418) on the whole beneficial, and are its terms the best which can be got? On the whole, I answer "Yes," changing my opinion on these points, as you will perceive. I base this change of opinion—

First, upon the fact, to which you draw my attention and which I had overlooked, that the proposed bill assures the presence on the pur-

chased land of a white farming population under the homestead laws instead of the purchase of the land in large grazing tracts by capitalists; and,

Second, upon the fact that, upon reflection, I think the prompt sale of the land more probable than when I wrote you.

I shall abstain, therefore, from any public criticism of the bill unless new considerations present themselves to my mind and seem to demand it, in which case I shall again put myself in communication with you.

I also wish to read two letters from one Frank Mullen, who has lived upon the Rosebud Reservation for twenty-four years, and is therefore familiar with the conditions upon said reservation, and is known to be a friend of the Indians, which letters are as follows:

Rosebud Agency, S. Dak.,
January 23, 1904.

Hon. Charles H. Burke, *Washington, D.C.*

Dear Sir: Will you kindly send me a copy of the new bill introduced by you in the House of Representatives for the opening of the unallotted lands in Gregory County.

We hope your splendid efforts for the bill will be successful this session, and that the Indians will get the money they have been expecting from the sale for the last two years, and a payment of account, this fall.

We have almost daily inquiries in reference to the bill, and I would consider it a favor if you would keep me advised of its progress, so that I can keep our people informed through our little paper.

I understand there have been some protests sent from here to the Committee on Indian Affairs. If this is so, they are unauthorized by any council of

Indians, from which they probably purport to emanate, and represent only a small minority of the Indians. The general sentiment is in favor of the bill, as outlined in the press dispatches, and the main question of the Indian is "When do we get the money, and how much?"

Yours, truly,

Frank Mullen.

Rosebud, S. Dak.,
February 2, 1904.

Hon. Charles H. Burke, Washington, D.C.

My Dear Sir: Referring to your letter of January 27, I would say that I have been perfectly familiar with the lands in Gregory County for the last twenty-four years, and have no hesitancy in saying that the price established in your bill now before the House of Representatives is fair and reasonable, and in my judgment all that the land as a whole is worth. Your bill exactly embodies my suggestion to Colonel McLaughlin, when here last, to increase the price named in the original agreement to \$3 per acre, in order that the Indians would realize the aggregate amount of \$1,000,040, as therein provided. This, in my judgment, your bill will more than accomplish; in fact I consider it the best proposition for the Indians which has been before the House.

You are undoubtedly aware of the cause of opposition here, and I am free to say that, in my opinion, there would not have been any opposition to amount to anything to Colonel McLaughlin's last agreement had the Indians not been persistently told that by holding out they would surely obtain \$5 per acre.

As a business proposition, I consider the Indians gain by the sale of the land, as it is of absolutely no benefit to the large majority, and that those whose allotments are in Gregory County gain more than any of the others by the increased value of their allotments.

Very truly yours,

Frank Mullen.

As to the benefits that the Indians will receive from the sale of this land and the amount of money they will receive per capita, Inspector McLaughlin, who negotiated the treaty with these Indians, in one of the councils said to the Indians:

The census rolls show 4,917 persons belonging to this agency, which would give an annual per capita allowance of \$30.50; that is, \$30.50 once a year to each man, woman, and child for a period of five years, aggregating \$152.50 that each man, woman, and child would receive in the five years.

At the expiration of five years, when this per capita payment would end, the matured increase derived from your stock cattle would then be marketable and continue to furnish a large number of beef cattle annually thereafter, which would place you upon an independent footing, and with proper care of your cattle would insure you a regular annual income. * * * Then the stock cattle, which, if properly cared for, will bring about a great deal of prosperity among you people. And in the third place, the cash payment for five years, which would enable you to take care of your families without any suffering until you begin to receive returns from the marketable cattle, the increase of the cattle that will be issued to you.

The Indians will have the benefit of the roads, of the courts, and the benefits of a county and State government without contributing a cent therefor, their lands

being nontaxable for twenty-five years, as before stated, while the settler who takes a homestead and acquires title to the same must do his share in paying these expenses.

Talk about robbery and that these Sioux Indians are not being fairly treated. Under the treaties of 1868, 1877, and 1889 they have drawn from the Treasury of the United States the sum of \$55,265,735.34. This is the amount obtained by about 20,000 Indians. Now, if you should contribute that amount of money to a similar number of white people and let them understand that they are going to be clothed and fed and educated and that they are going to have houses provided for them, the effect would be that you would simply make paupers of them. As soon as this Government comes to a realization that this is not a question of sentiment but a question of practical business, the Indians will commence to make some progress similar to that which has already been accomplished by what I consider an advanced policy.

Under the present administration of Indian affairs the idea of self-support is encouraged. If the Indian is able to work—if he is able-bodied—the Indian Office says to him: "If you want to eat you must work." They provide payment for the services of the Indian in building roads, ditches, fences, etc., and pay him money in lieu of rations. In other words, they give him to understand that he must help himself.

I want to put in the Record, that it may receive the special attention of the House, the gross amount of the several items to which I have referred. It will be found very interesting reading. For instance, under article 10 of the treaty of 1868 there is provided for "Indians roaming," \$5,464,400.

In order that it may appear just what this item means, I will read the provision of article 10 of the treaty authorizing and requiring payments to be made. It is as follows:

And in addition to the clothing herein named, the sum of \$10 for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of thirty years while such persons roam and hunt, and \$20 for each person who engages in farming, to be used by the Secretary of the Interior in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper.

Appropriations for Sioux under treaties of 1868, 1877, and 1889, to and including 1904.

Article 7, treaty 1868, education	\$2,180,000.00
Article 8, treaty 1868, seeds . . .	94,000.00
Article 10, treaty 1868, clothing .	4,110,500.00
Article 10, treaty 1868, Indians roaming	5,464,400.00
Articles 8 and 13, treaty 1868, employees	1,421,900.00
Article 10, treaty 1868, cows and oxen	126,000.00
Article 10, treaty 1868, article 5, agreement 1877, subsistence and civilization	36,122,500.00
Article 14, treaty 1868, presents .	1,500.00
	<hr/> 49,520,800.00
Section 17, act 1889, permanent fund	3,000,000.00
Section 7, act 1889, Santees . . .	45,000.00
Section 17, benefits to allottees .	1,243,685.34
Miscellaneous for thirty years . .	<hr/> 1,456,300.00
Total	55,265,735.34
March 2, 1904.	

Mr. Chairman, I regret very much that I have been limited in time as I have been. I wanted to bring to the attention of the House a number of matters which under the circumstances I shall be compelled to put into the Record. I commend them to Members of this House.

I think the time has come, as I before stated, when we should legislate not only for the purpose of taking from the Indians the lands which they do not require, which were set aside for them originally for hunting and fishing, but also adopt a different policy in other respects, as we are already doing to some extent, in appropriating money for the support and maintenance of the Indians.

Why, Mr. Chairman, to give the Indian all the money that can possibly be realized from some land in which he may have some interest is not for his benefit. He simply squanders the money which he thus receives; it does him no good, except in a few instances. You will generally find that the opposition displayed to legislation which is for the interest of the Indians comes from somebody interested in having the Indians obtain just as much money as possible, because the person is desirous of the Indian getting as much money as possible in order that he may get it from him.

To this bill there never would have been any opposition to speak of on the part of the Indians had it not been for the agitation of certain white men residing upon or adjacent to the reservation, who had a selfish interest in the reservation remaining in its present state, possibly to enable them to range their cattle free over the lands and be permitted to continue trespassing.

In conclusion, Mr. Chairman, I maintain that the surplus land of an Indian reservation, for which the Indian has no further use, is not the property of the

Indians, at least to no greater extent than it belongs to the whole people, and I maintain that the most that the Indian has is a mere right of use originally accorded him for the purpose of hunting and fishing, and that he should be obliged, upon such terms as are just and fair, to surrender it, that it may become a part of the public domain and be converted into homes and farms and occupied by people who will contribute to the development and material advancement of the country, and I therefore submit that there is no justification for the opposition that has developed against the Rosebud bill, and that it is a measure that proposes to generously pay the Indians for their right to the lands, and I therefore hope that it may be enacted into law. [Applause.]

Mr. Chairman, I desire to extend my remarks in the Record and append some authorities bearing upon the subject of Indian titles, and will ask to have the same printed.

APPENDIX

In the case of *Fletcher v. Peck* (6 Cranch, 87), decided by the Supreme Court of the United States in 1810, referring to the grant of lands within an Indian reservation, the court said:

"The reservation for the use of the Indians appears to be a temporary arrangement, suspending for a time the settlement of the country reserved."

In the case of *Johnson v. McIntosh* (8 Wheaton, 543), decided in 1823, it was decided that the fee to all Indian lands is in the Government and may be granted subject to the transient usufructuary right of the aboriginal occupants, and this doctrine is followed in the case of *United States v. Cook* (19 Wall., 591), decided in 1873, in which case certain Indians cut and disposed of

certain timber from an Indian reservation, and the Government brought suit to recover from the purchaser, Cook, the value of the timber, the theory being that the felling of the timber was an injury to the reversion of the United States. The question being squarely presented as to whether the fee was in the Government, the court sustained this view. Chief Justice Waite thus stating the doctrine considered applicable, as follows:

"The right of the Indians in the land from which the logs were taken was that of occupancy alone. They had no power of alienation, except to the United States. The fee was in the United States, subject only to this right of occupancy. This is the title by which other Indians hold their lands. It was so decided by this court as early as 1823 in *Johnson v McIntosh*. The authority of that case has never been doubted. The right of the Indians to their occupancy is as sacred as that of the United States to the fee, but it is only a right of occupancy. The possession, when abandoned by the Indians, attaches itself to the fee without further grant." * * *

In *Buttz v. Northern Pacific Railroad* (119 U.S., 55), the railroad company claimed under the grant conveying certain sections along the lines of its projected route, which at the date of the grant was within an Indian reservation, and the Indian title not extinguished for some years later, the court said:

"The land in controversy and other lands in Dakota, through which the Northern Pacific Railroad was to be constructed, were within what is known as 'Indian country.' At the time the act of July 2, 1864, was passed the title of the Indian tribes was not extinguished. But that fact did not prevent the grant of Congress from operating to pass the fee of the land to the company. The

Indians had merely a right of occupancy—a right to use the land subject to the dominion and control of the Government. The grant conveyed the fee subject to this right of occupancy. The railroad company took the property with this incumbrance."

In the case of *Beecher v. Wetherby* (95 U.S., 517), the question presented was whether or not the State took title under the school grant for lands within an Indian preservation, or whether the title remained in the United States subject to be otherwise disposed of by some arrangement with the Indians. The decision of the court was that the title of the State attached, notwithstanding the right of occupancy, and that an attempt by the United States to sell the school sections for the benefit of the Indians was void, and the court said:

"The right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee and could not disturb the occupancy of the Indians, that occupancy could only be interfered with or determined by the United States." * * *

"The right of the United States to dispose of the fee of the lands occupied by them (Indians) has always been recognized by this court from the foundation of the Government. It was so ruled in *Johnson v. McIntosh* (8 Wheaton, 543), in 1823, and in *United States v. Cook* (19 Wall., 591), in 1873. Other cases between those periods have affirmed the same doctrine. *Clark v. Smith* (13 Peters, 125). See also *Jackson v. Hudson* (3 Johnson, 375); *Veeder et al. v. Guppy* (3 Wisconsin, 502), 8 Opinions Attorney-General. pp. 262, 264. In

United States v. Cook (19 Wall., 591), the United States maintained replevin for timber cut and sold by Indians on land reserved to them, the court observing that the fee was in the United States and only a right of occupancy in the Indians; that this was the title by which other Indians held their land, and that the authority of *Johnson v. * * **

"In the construction of grants supposed to embrace lands in the occupation of Indians questions have arisen whether Congress intended to transfer the fee or otherwise, but the power of the United States to make such transfer has in no instance been denied. In the present case there can hardly be a doubt that Congress intended to vest in the State the fee to section 18 in every township, subject, it is true, as in all other cases of grants of public lands, to the existing occupancy of the Indians so long as that occupancy should continue. The greater part of the State was, at the date of the compact, occupied by different tribes, and the grant of sections in other portions would be of comparatively little value. Congress undoubtedly expected that at no distant day the State would be settled by white people, and the semibarbarous condition of the Indian tribes would give place to the higher civilization of our race; and it contemplated by its benefactions to carry out in that State, as in other States, 'its ancient and honored policy' of devoting the central section in every township for the education of the people." (See also *Cooper v. Roberts*, 18 How., 173.)

Attorney-General Cushing (8 Opins. Atty. Gen., 255), in the Portage City case, in relation to whether the act of Congress approved August 6, 1846, affected certain lands within an Indian reservation, used the following language:

"There was a time when the true relation of the Indians to the United States was not so clearly seen as it now is. We have been accustomed to make treaties with them as if they were independent of us; that was an error. We dealt with their petty tribes as nominal nations; that led to strange misconceptions. We had spoken of their lands—as if a handful of savages who happened to be within the geographical limits of country large enough for an empire could be deemed its proprietors in virtue of any rule of natural right or of positive law. We had respected their assumed rights; that is, had left them to their savage quasi independence, instead of by force compelling them to enter into some appropriate place in the social organization, and thus they had perished of too much liberty. Finally, we of the older States of the Union, who had expelled or killed off most of our Indians or reduced them to a condition of hopeless pupillage, had now come to be extremely sensitive to the alleged wrongs of the same nature; that is, policy in imitation of ours, to which the younger States of the South were now subjecting their Indians.

"The elaborate investigation of the subject which ensued cleared off all these errors, and discussion ended with the great cases of the *Cherokee Nation v. The State of Georgia* (5 Peters, 1), and *Worcester v. The State of Georgia* (6 Peters, 515).

"It is the universal doctrine of public law that the Indians are the domestic subjects of the particular European-American state in which they happen to be. (*Cherokee Nation v. The State of Georgia*, 5 Peters, 1.) It is a doctrine of our public law equally fundamental that the Indians do not hold a fee in the lands of their aboriginal occupation, but only a usufruct, the fee being in the United States or, in some cases, in the several

States. (*Johnson v. McIntosh*, 8 Wheaton, 643; *Fletcher v. Peck*, 6 Cranch, 89.)

"When the United States made this grant to the State of Wisconsin the fee of all the land was in the United States, subject, in respect of a part, to the occupancy of the Menomonees. That usufructuary occupation was capable of being extinguished by the United States, and by them alone, and until its extinction the entire original title remained between them and the Indians. * * *

"In the case of *Mitchell v. The United States* that was one of the points, and it was expressly held by the court as the established public law of America that the Government owns the original fee of the soil, and may grant the same while the lands remain in the possession of the Indians. (9 Peters, 711.)

"The same doctrine is reaffirmed in the case of *The United States v. Fernandez*. (10 Peters, 303.)

"There is no room whatever to question the law of these decisions. They are in strict conformity with principle and precedent."

Mr. SHERMAN. Mr. Chairman, I want to state what I understand to be the Indian title to the lands which have been referred to, because I am fearful that an erroneous impression may have been left upon the minds of some Members by the statements of the gentleman from South Dakota [Mr. Burke].

The Supreme Court more than seventy-five years ago declared that the right of the Indian was a right of occupancy, a right of use, a right which was perpetual, and could be interfered with or changed only upon the assent of the Indians. The Supreme Court recently have modified that decision to the extent of saying that the Congress of the United States occupied the position of a guardian for the Indians, a guardian that could act

without asking the assent of any court, a guardian supreme in its powers, but whose powers must be exercised solely for the benefit of the ward. In other words, the Supreme Court now holds that while the title of the Indians is a title simply of use and occupancy for their benefit, Congress can dispose of that title if it sees best, if in its wisdom it thinks it is for the benefit of the Indians to do, but can do that only for the benefit of the Indians and for no other purpose.

Mr. BURKE. Will the gentleman permit one observation?

Mr. SHERMAN. Yes.

Mr. BURKE. I desire to call the gentleman's attention to the fact that in the case of *Lone Wolf v. Hitchcock*, decided January 2, 1903, after quoting article 12 of the treaty, Mr. Justice White, who delivered the opinion of the court, said in part:

The appellants base their right to relief on the proposition that by the effect of the article just quoted the confederated tribes of Kiowas, Comanches, and Apaches were vested with an interest in the lands held in common within the reservation, which interest could not be divested by Congress in any other mode than that specified in the said twelfth article, and that as a result of the said stipulation the interest of the Indians in the common lands fell within the protection of the fifth amendment to the Constitution of the United States, and such interest, indirectly at least, came under the control of the judicial branch of the Government. We are unable to yield our assent to this view.

The contention in effect ignores the status of the contracting Indians and the relation of dependency they bore and continue to bear toward the Government of the United States. To uphold the

claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency when the necessity might be urgent for a partition and disposal of the tribal lands, of all power to act if the assent of the Indians could not be obtained.

Now, it is true that in decisions of this court the Indian right of occupancy of tribal lands, whether declared in a treaty or otherwise created, has been stated to be sacred, or, as sometimes expressed, as sacred as the fee of the United States in the same lands. (*Johnson v. McIntosh* (1823), 8 Wheat., 543, 574; *Cherokee Nation v. Georgia* (1831), 5 Pet., 1, 48; *Worcester v. Georgia* (1832), 6 Pet., 515, 581; *United States v. Cook* (1873); 19 Wall., 591, 592; *Leavenworth, etc., R. R. Co. v. United States* (1875), 92 U.S. 733, 755; *Beecher v. Wetherby* (1877), 95 U.S., 525.)

But in none of these cases was there involved a controversy between Indians and the Government respecting the power of Congress to administer the property of the Indians. The questions considered in the cases referred to, which either directly or indirectly had relation to the nature of the property rights of the Indians, concerned the character and extent of such rights as respected States or individuals. In one of the cited cases it was clearly pointed out that Congress possessed a paramount power over the property of the Indians, by reason of its exercise of guardianship over their interests, and that such authority might be implied, even though opposed to the strict letter of a treaty with the Indians. Thus, in *Beecher v. Wetherby* (95 U.S., 525), discussing the claim that there had been a prior reservation of land by treaty to the

use of a certain tribe of Indians, the court said (p. 525):

"But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States. It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action toward the Indians with respect to their lands is a question of governmental policy, and is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians."

Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the Government. Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and, of course, a moral obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. But, as treaties made with foreign nations (*Chinese exclusion cases*, 130 U.S., 581, 600), the legislative power might pass laws in conflict with treaties made with the Indians. (*Thomas v. Gay*, 169 U.S. 264, 270; *Ward v. Race Horse*, 163 U.S., 504, 511; *Spalding v. Chandler*, 160 U.S., 394, 405; *Missouri, Kansas*

and *Texas Rwy. Co. v. Roberts*, 152 U.S., 114, 117; *The Cherokee Tobacco*, 11 Wall., 616.)

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulation of the treaty, but may demand, in the interest of the country and the Indian themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians, it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of government policy, particularly if consistent with perfect good faith toward the Indians. In *United States v. Kagama* (1885) (118 U.S., 375), speaking of the Indians, the court said (p. 382):

"After an experience of a hundred years of the treaty-making system of government Congress has determined upon a new departure—to govern them by acts of Congress. This is seen in the act of March 3, 1871, embodied in section 2079 of the Revised Statutes: 'No Indian nation or tribe within the territory of the United States shall be acknowledge or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.' "

In upholding the validity of an act of Congress which conferred jurisdiction upon the courts of the United States for certain crimes committed on

an Indian reservation within a State, the court said (p. 383):

"It seems to us that this is within the competency of Congress. These Indian tribes are the wards of the nation. They are communities dependent on the United States; dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress and by this court whenever the question has arisen.

* * *

"The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes."

That Indians who had not been fully emancipated from the control and protection of the United States are subject, at least so far as the tribal lands were concerned, to be controlled by

direct legislation of Congress is also declared in *Choctaw Nation v. United States* (119 U.S., 1, 27) and *Stephens v. Choctaw Nation* (174 U.S., 445, 483). * * *

We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the Government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary can not question or inquire into the motives which prompted the enactment of this legislation.

Mr. FITZGERALD. It has never been decided that Congress could divert this title without compensating these Indians for the perpetual right of occupancy that they have.

Mr. SHERMAN. Certainly; and what I wish to emphasize is the fact that the Supreme Court never has so held, and that it is not the intention of Congress and it is not the intention of any Indian Committee or anybody else, so far as I know, to dispose of any right of the Indians except for their benefit.

Mr. DALZELL. Congress is the last judge of what is for their benefit.

Mr. SHERMAN. Congress is the supreme judge.

Mr. BURKE. I do not want to be misunderstood. I have maintained and do declare that in my best judgment this bill does provide what is fair and just and right as a compensation for the Indians from any standpoint.

Mr. SHERMAN. I understood the gentleman's position. How much time have I, Mr. Chairman?

The CHAIRMAN. The gentleman from New York has nineteen minutes remaining.

Mr. SHERMAN. I yield that nineteen minutes to the gentleman from Iowa [Mr. Hedge].

The CHAIRMAN. The gentleman from Iowa [Mr. Hedge] is recognized for nineteen minutes.

Mr. HEDGE. Mr. Chairman, I rise in a sense to a question of personal privilege. During my brief and quiet sojourn here I have been the recipient of constant favor from many Members of this House without distinction of party or religion. This kindness, so grateful to my feelings, has from the first day of the extra session of the Congress presented itself in a new and interesting form. In addition to the usual inquiry after my health or the nature of the private legislation which I may be suspected of a desire to promote, these friends, assuming an air of affectionate solicitude too good to be true, have been daily insisting on my enriching their intelligence with my views of the Iowa idea, until at last I am, like the unjust judge, from pure weariness compelled, so far as in my limited measure I may, to satisfy their importunate morning thirst in this regard.

Furthermore, my sense of loyalty to my constituents and neighbors, as well as of duty to these teasing associates whose travel in their own country seems never to have extended west of the Alleghenies, who have never gazed upon the star of empire, have no notion of its present position or memory of its triumphant course, impels me to offer what help I may to their understandings by a hint or suggestion or two of the quality of the men over whose homes and fields of industry that star has so reasonably fixed its abiding place.

[#18]

(Concerns extension of railway to Gregory South Dakota.)

[History of the Chicago & North Western Railway System, 137-138]

EXTENSION FROM BONESTEEL

The extension from Bonesteel to Gregory, S.D., a distance of 25.96 miles, under construction at the beginning of this fiscal year, had been completed and opened for traffic. A further extension of this line from Gregory to Dallas, S.D., a distance of 4.84 miles, had been undertaken and would be completed during the ensuing fiscal year.

* * *

PIERRE, RAPID CITY & NORTH-WESTERN RAILWAY

* * *

The company had also undertaken the construction of an extension from Bonesteel, South Dakota, to Gregory, South Dakota, a distance of 25.93 miles, and would be completed during the ensuing fiscal year. This extension will pass through Gregory County, which embraces that portion of the Rosebud Indian Reservation opened to settlement in 1904, and will terminate near the present eastern boundary of that reservation.

[#19]

(Statute extending time for homesteading on lands which were heretofore a part of the Rosebud Indian Reservation.)

[Act of Feb. 7, 1905, Ch. 545, 33 Stat. 700]

CHAP. 545.—An Act To provide for the extension of time within which homestead settlers may establish their residence upon certain lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, South Dakota, and upon certain lands which were heretofore a part of the Devils Lake Indian Reservation, in the State of North Dakota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the homestead settlers on the lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, South Dakota, opened under an Act entitled "An Act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect," approved April twenty-third, nineteen hundred and four, and the homestead settlers on the lands which were heretofore a part of the Devils Lake Indian Reservation in the State of North Dakota, opened under an Act entitled "An Act to modify and amend an agreement with the Indians of the Devils Lake Reservation, in North Dakota, to accept and ratify the same as amended, and making appropriation and provision to carry the same into effect," approved April twenty-seventh, nineteen hundred and four, be, and they are hereby, granted an extension of time in which to establish their residence upon the lands so opened

and filed upon until the first day of May, anno Domini nineteen hundred and five: *Provided, however,* That this Act shall in no manner affect the regularity or validity of such filings, or any of them, so made by the said settlers on the lands aforesaid; and it is only intended hereby to extend the time for the establishment of such residence as herein provided, and the provisions of said Acts are in no other manner to be affected or modified.

Approved, February 7, 1905.

[#20]

(Legislative history of H.R. 25608 a bill for sale of surplus lands of the Rosebud Reservation)

[41 Cong. Rec. 241 (1906-1907)]

Rosebud Reservation: bills for sale of surplus lands in (see bills S. 6618; H.R. 20527, 24987, 25608.

[41 Cong. Rec. 286 (1906-1907)]

H.R. 25608—

To authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Stephens; Committee on Indian Affairs 2800.

[41 Cong. Rec. 2800 (1907)]

By Mr. STEPHENS of Texas (by request): A bill (H.R. 25608) to authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[#21]

(Minutes of Council from Dec. 14 to Dec. 20, 1906 and Jan. 7 to Jan. 21, 1907)

Proceedings of a council held at Rosebud Agency, S.D., December 14th, 1906, by James McLaughlin, U.S. Indian Inspector, with the Indians of the Rosebud Reservation, for cession to the United States of their unallotted lands in Tripp County, South Dakota.

---(*)---

Council convened at 1 o'clock, P.M., with about 150 Indians in attendance.

AGENT KELLEY: My friends, you have been called together in council at the request of Inspector McLaughlin, whom it is hardly necessary for me to introduce to you, as you have all met him before, in order that he may talk with you in regard to the opening for settlement of the unallotted lands in Tripp County. As you have met him before, you all know that he is a good friend of yours and that you can place confidence in what he tells you.

INSPECTOR MCLAUGHLIN: My friends, I am glad to meet you here today. We do not meet as strangers as we have met many times and known each other for many years. You all know that I am a sincere friend of the Indians and earnestly interested in their welfare, and feel much pride in the steady improvement and advancement of the Sioux Tribe.

You have been assembled in Council here today that I may explain to you people the object of my visit to your Agency at this time. I am here under orders of the Secretary of the Interior to submit to you a proposition for the cession of your surplus unallotted land in Tripp County.

Instructions prepared by the Commissioner of Indian Affairs, who has special charge of all Indian matters, have been furnished for my guidance and to govern in our negotiations.

I now submit to you that the lands of your reservation embraced in Tripp County approximates 1,094,000 acres, of which there has been about 187,000 acres allotted, leaving a surplus of about 907,000 acres. The Department desires that you cede these unallotted lands, to be disposed of under the general provisions [2] of the homestead and townsite laws of the United States, to be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be entered and settled upon.

I trust that we may reach an agreement as to the price per acre and plan of payment, which will meet with approval of the Department and concurrence of Congress, and I shall endeavor to explain the question so that you may clearly understand every phase of it.

This is about the fourth time that I have been here negotiating with you for land. I have been here so often that upon my arrival a few days ago, several of my Indian friends asked me "If I was after more land," that "Every time I visited here I was asking for land." My friends, I think it to your interests that a person who understands your needs shall be sent to negotiate with you rather than a person unfamiliar with the conditions existing among the Sioux, and I have again been sent here to present another proposition to you. In the beginning, I will state that on the 3rd day of this month, eleven days ago, Congressman Burke of this State introduced a bill in Congress for the opening of Tripp County. This document in my hand is a copy of the Bill. I did not see that until I came here. I was not aware until I arrived here that it had already been introduced in Congress, but I had

heard that such a Bill was going to be introduced, and yesterday's paper had an item stating that Senator Gamble had introduced a similar bill in the Senate, day before yesterday.

I understand that a number of copies of this bill have been sent out to parties here on the reservation, and have been circulated and passed around among you; therefore, many of you doubtless understand its provisions, but if you wish to have me read and explain it, I will do so. This Bill is very similar to my instructions. It is along parallel lines, and if it is your desire that I read and explain it, giving the full meaning of each [3] provision, I will do so.

(Many voices. We want you to read it and explain it. Many of us have not heard it read or explained)

(Inspector McLaughlin reads House Representative Bill #20527, 59th Congress, 2d session)

Inspector then said. I have now announced the object of my visit to your reservation at this time, and have read the Burke Bill, providing for the opening of the Tripp County unallotted lands. I think I have explained very clearly the provisions of this Burke Bill, which is almost identical with what my instructions, prepared in the Indian Office, are. You therefore have the proposition before you and I would like to hear from you people as to the sentiment prevailing regarding the matter. You have undoubtedly been discussing this among yourselves, as I know that it has been talked of in a general way for some time past, and I would like to know your sentiments regarding it. I want you to bear in mind that I am a very patient listener and everything you say here in council will be taken down by the stenographer and be transmitted with my report, and I shall endeavor to explain very clearly anything you may not fully understand regarding this proposed cession.

The question now before you is, "Are you willing to dispose of your unallotted lands in Tripp County?" If so, I would like to hear from you and if you are not in favor of it, I would like to have you give your reasons. I am here to answer any questions and to explain any particular phase of this proposed cession you may not understand, and will not mislead you by any misrepresentations.

TWO STRIKE: My friend, I am going to tell you first my own thoughts. You were here before for a similar object to this. You came for a piece of land and I went under a hardship for the children. You came for land and I gave you the land and you took it back with you. The land was dear to us. You said the payment would be for five years. I think we have three years more to come. [4] The Great Father made some payments to the people here. I suppose the Great Father has no more money. I think the people did not get enough money at that time. They got left. I think they borrowed money from the stores and accomplished what they wanted. My friend, you have mentioned a good many things here, but this is all I know. I thought I would explain myself. I gave you the land and thought the school children would have a share of the money in their pockets. That is the reason I gave you the land. You got the land, but instead of giving the children's money to them, you held it back. The children here are ragged, have nothing, they are ragged and hungry amongst the people here. They go to many different schools, and keep writing that they want money, that they want clothing, and the little money we earn we have to send to them.

My friend, there seems to be no money to buy the land with. You ought not to have come. My friend, you have said a good many words here, but we wish you to consider this matter. One more word I want to say. When

General Crook came here, all of us signed his bill. It seems that the Government has no money to buy land with, you ought to pay for what you got before asking for more. The railroads passed here without paying us anything. I understand there is going to be another one through here, but we have not heard anything about the pay. My friend, tell the railroad people not to come in here, to turn back from where they are. We want our children to grow up on this reservation and on this land. They have no land yet and we want them to grow up here. That is all I have got to say.

INSPECTOR MCLAUGHLIN: In regard to the railroad running north of White River, that road is being built across what is called the ceded portion. The Indians of the entire Great Sioux Reservation ceded that portion of the reservation in 1889, by what you call the Crook Treaty, the act of March 2, 1889. That land has all been surveyed and you have received credit on the books of [5] the Treasury, \$1.25 per acre for the land taken the first three years after it was opened, 75¢ per acre for the next two years, and 50¢ per acre for all the rest excepting two sections in each township (school lands) for which \$1.25 per acre was credited you. If a railroad was coming through your reservation proper, that is, any of the segregated reservations, you would receive pay for it. There is no railroad running over any portion of the Rosebud Reservation, none within the boundaries of your reservation. That railroad in Gregory County has not yet come across your reservation boundary, but should it come into your reservation, you would receive pay for its right of way. Any of the Indians who may live in Gregory County whose allotments have been crossed by that railroad, have, or will receive pay for the privilege of crossing their allotments, so you need not worry about that, my friends.

STRANGER HORSE: My friend, you came for some business, and what you have come for, I put my hat over, and want you to consider it. (Placing his hat over the Burke Bill) My friend, I will tell you that the surplus land we have, we do not propose to sell any of it yet. My friend, when I went to Washington and stood there, I guess you know all that was said at the time. All the good land we have left we have saved for our children. I mentioned that question at Washington and you were there and heard it. I said that. You have some money for a good many of our children, and many of our children have not got land yet. This I have said to the Great Father, and that is the question I put my hat over. What you now come for I put my hat over. My friend, the land we sold down there in Gregory County we have sold to you. I will say that the agreement you have changed it in a good many ways to suit yourself, and our children are ragged and a good many nearly frozen to death. My friend, I will say that we have a lot of children who can take up that Tripp County land, which is the best we have left, and we want them to have their allotments there, and when [6] that is done, and there are any surplus lands left and you then come, we might consider the question. I do not blame you, and I am not going to blame the Great Father, but I blame the Great Father's council. I want you to take this answer back and I want you to say it quietly.

I will tell you this, my friend. Sometime in the future, after a while, we might sell the land, but we will sell it at auction and in tracts of 160 acres. My friend, that is all I have to say. Very short words. I wish you to take this answer back to the Great Father with a good heart.

HIGH HORSE: My friend, I heard that you were coming. I have been expecting you and I see you today. What you come for is the land. The land you come for is

mine. My friend, I will tell you that we are not going to sell you any of the surplus land. I want you to know that. My friend, you have been here to see us often. You used to have a good feather in your hair, but we do not want you to wear it this time by getting our land. My friend, I cannot spare any land. That is all I want to tell you.

HIGH HAWK: When you came here for a piece of land before, I met your wishes, but I stand back this time. Our children want that piece of land down there. That is the reason I stand back. I have four grown daughters and they have children and they need the land, I say this because they want the land. The people are not going to sell you the land and that is also my mind. You are a good man, just the same as one of us. Like an Indian we know each other exactly. We all hold you up. That is what we say. But the people are not going to spare any of that land. They are not going to sell any of that land. I say this strong and stop.

GHOST BEAR: My friend, I want to shake hands with you very tight. I remember how hard I shook hands with you here before. That is the time when we sold Gregory County. At that time, I took [7] you for a very good man. That is how I judged. And you said that the council was good at that time. They all want me to ask you how you sold our land, have you brought the money for the children? They do not want me to sign anything. They told me to tell you to go away from here with a good heart. That is what they say. If you go home now and tell them: what I have said to you and come again with the money in your hand for the children, then their hearts will be good. In case you do that you can trade me off for cigars.

CHIEF PICKET PIN: I am not going to say very much, but where you come from, I am going to mention them. I think the Great Father has got counselors there. They

have a Secretary there next to the Great Father. If there is any person there in authority he ought to have said before you come "Hold on, let us pay them old debts, let us settle the Gregory County claim first. You see only a few people here today. Nearly all of us are dead now. When you get back home, you want to say to those in authority, that because the children's money has been withheld we will not give you any answer. That is what we want you to say. This is the way I think. The reason I say that, the Great Father ought to depend on me. I have helped you to fight many people here and make treaties. You want to tell the Great Father that our children's money has been held back and many of them have died. What do you hold their money for? That is what you want to tell the Great Father. We are friends to you. He sent you here. He ought to send a man here who is a rascal that we ought to talk roughly to, but you are a friend of ours so that is why you come. My friend, you are going home this time without any land.

CROW DOG: My friend, you came for a piece of land before, and this is the way you came for it. You come again and ask the people here about their land and if we are going to consent or [8] or not. That is what you come for. The last time you were here, you mentioned about the children's money, very good words. You answered all the questions we asked you then, and we did not notice anything wrong at the time. A while ago you said "Are you going to accept this proposition or not?" My friend, I will say to you I am on the side "they say no."

HIGH PIPE: Four questions I am going to say to you. The Great Father wishes the people to live and they feel the same way. We are Indians. We like to have the generation have long lives, to live longer. It looks to me, my friend, that the Great Father had to wake these

Indians up. Looks like their heads are now open and faces open. Now at the time the Gregory County treaty was made I was amongst the people here who were hard up. How were we going to make a living? They thought this way. They thought they would sell the land and get lots of money for their children and get that money and buy something useful, but no, the Great Father has got a new idea into his head and holds it tight and the people are kicking on it because they can't reach the money. My friend, our Gregory County payment lasts two years yet. We all know that. The best land we have is in the eastern part of our reservation, Tripp County. The Indian people want to get land for their children there. They are very anxious to get land for their children down there. My friend, I guess the Indians have more knowledge than formerly, they have waked up, that is, they have stronger backbone, therefore we will hold on to our best land for our children. My friend, I don't want you to go to the issue stations and have a talk with those people down there. Do not do that. Talk to our Agent here, then go to the Great Father and say the Rosebud Indians won't cede any more land because you have waked them up. You have their children's money and you won't give it up. That is what we want you to tell the Great Father. My [9] friend, the kind of a man I am is that anything I say I always keep my word.

RED HILL: What the Chiefs and head men have said to you is true. I will tell you now do not go any further.

DOG TRAIL: My friend, I want to tell you something I want you to judge very carefully. I am a man who has no allotment yet. That is the kind of people you ought to question. What was accomplished by former treaties I am holding on to, but do not expect to live long. I always object to anything new that comes up, because I want the children to have something after I die. You came here for

a piece of land so they gave it to you. You mentioned lots of money at the time. Then I said "How". For my part, I buy grub for the children, I buy clothing for the children. I see those children have no money. In that way I throw my money to the children and I do not have anything for myself and that is not very good to us. My friend, you said some very good words to the people and going to fool the people with those words, that is what I thought. But the Great Father has a law for his people. As Indians we have our rights and certain powers. We have a right to give ourselves a law. A good many people have spoken for you and spoken well, but I am afraid of you. In this way I will say that I will have nothing to do with this cession. You said that anybody might ask questions. I am somebody although I have no allotment.

INSPECTOR MCLAUGHLIN: My friends, you all know that it takes two persons to make a bargain in the purchase or disposal of anything. In the matter of the cession of your surplus lands in Tripp County, you represent your individual interests and the common interests of the tribe. I am here representing the Government of the United States in these negotiations. There can be no trade or bargain of this magnitude made without free and earnest discussion of it, and as the proposal for the cession of [10] Tripp County unallotted lands did not come from you people, it is not my intention to bring to bear upon you any undue pressure. I do not intend to do that. I will simply state facts and try to have you understand what is best for your interests, individual interests as well as the interests of the entire people. I see that your principal objection to discussing the matter is because your minor children, all under 18 years of age, have not received payment from your Gregory County lands. That is a very small matter. No doubt you feel that keenly, but that is a small matter

compared with the main question at issue, which is, the legislation proposed by Congress, and in connection with this I will read an extract of the Commissioner's instructions to me. I would feel that I was derelict in my duty if I did not explain this matter to you people very clearly. A paragraph of my instructions reads as follows:

It is but right to the Indians also that you should explain to them with great particularity that the law as defined by the Supreme Court of the United States, our highest and final tribunal, vests in Congress the right to open their lands without their consent; that the desire of the Department in sending you to talk the matter over with the Indians is to obtain from them their views of the terms on which the opening ought to be made; and that it will doubtless be to their advantage to enter into an agreement containing such reasonable provisions as they think would be most beneficial to them as a tribe.

Now, my friends, I feel confident that in case you close your ears and will not listen to what I desire to say to you and close your eyes and not look at the proposition, that the Burke Bill would become a law just as I have read it to you. I wish you to throw all grievances behind you and weight the question with clear judgment and as to what will be best for your interests. Meet me here tomorrow morning at 9 o'clock and tell me of any changes you would wish to have made in this bill which has already been introduced in Congress. It is my desire to do the very best possible for you that the Department may approve and Congress ratify. I can speak to you for the Secretary and Commissioner, because I know their minds in this matter, and we should be able to make an agreement which will meet your wishes and be acceptable

[11] to Congress, without having Congress open Tripp County without your consent. I would suggest that you people get together tonight and take this copy of the Burke Bill and study it. This copy belongs to your Agent, and I know that he will let you have it for that purpose. Have it read by some of your young men who can understand it, and see what there is in it that you concur in and would consent to, and what, if anything, additional you would wish inserted. I promise you faithfully that I will do everything consistent that I can to meet your wishes in the premises, but it must be such as will meet the approval of my superiors. I would not wish to report back by letter or to return to Washington in person and report that the Rosebud Indians would not listen to a proposition; that they simply say "No" and would not discuss the matter. I shall expect you to be ready tomorrow morning to discuss the matter and state to me what your objections are and what you demand over and above what this bill specifies.

As I said before, it takes two parties to make a bargain. You are one party in this matter and I the other, I representing the Government, and we should discuss it in a friendly manner. My friend, High Pipe, said that he did not wish me to visit the sub-issue stations, to which I now state that I will not, unless we should reach an agreement here at the Agency, and then to make it more convenient for the Indians and save them long journeys here, I will visit the outlying stations. I do not wish to report that you people would not listen to any proposition and that you refused to discuss it when submitted to you. I want you to think the matter over tonight and meet me tomorrow and let me know your minds, that I may be able to judge as to whether or not I can meet your wishes. I promise not to continue our council long. I will not keep you here from day to day for any great length

of time and especially against your will. If we cannot reach some agreement tomorrow, or have some encouragement to justify my remaining, I will discontinue the council and leave your reservation. That is all I have to say [12] tonight and as I suggested, meet me at 9 o'clock tomorrow that we may discuss the matter further.

THIN ELK: My friend, at this time it makes me think that there are no white people. We sold a piece of land and we got two payments. The second payment was \$6.00 that we got, and that is why it makes me think there are not any more white people and still you come here to buy more land for them. For once, my friend, if you come here and do not succeed in buying land, it will not kill you. My friend, you must stand by us and help us, and tell the Great Father what shape we are in. We are starving to death.

TODD SMITH: Tonight you ask us to hold a council and consider this matter. You told us to consider this paper, whatever is in this paper, and we shall do that. I will say a short word whatever I think is not right in it. In the first place, it says for the first three months it is going to be \$5 per acre and the following three months it is going to be \$4 per acre and the remainder shall go at \$2.50 per acre. You must remember that the white people are smart and they are schemers and they are out to work for their best interests. Now we will say for the first three months where they have to pay \$5 per acre, will there be any rush for the land? The first three months will be gone and then the \$4 payment will come. Will they rush right in and take it? What I say about the white people being smart and schemers, they will wait for the first three months to pass and then the next three months to pass and then we will realize but \$2.50 per acre for our land.

INSPECTOR MCLAUGHLIN: All the good land will be taken the first three months. You all remember the choice lands were all quickly taken when Gregory County was opened to settlement.

TODD SMITH: I do not know that such will be the case again.

(Council adjourned at 4 o'clock P.M., to be reconvened at 9 o'clock A.M., Saturday, the 15th.)

[13] Council reconvened at 1 P.M., Saturday, Dec. 15th.

INSPECTOR MCLAUGHLIN: Having counceled among yourselves last night, I hope that you have come to some conclusion as to what you wish to present and I am now ready to hear you.

HIGH PIPE: I have a short statement to make. We adjourned at about 5 o'clock yesterday. You have said this to us. "Tell me your reasons; that we would have a talk at 9 o'clock in the morning again, for us to give you our reasons. My friend, we had a talk in this council room last night and we have fixed up our reasons and we want you to hear them. There is one question I want to say here. We have accomplished what you want, but my friend, if you have anything to say I want you to say it.

RALPH EAGLE FEATHER: You came to ask the whole people some questions. What the people want they have put in writing. A very little question I want to put to you here. At the time you came here and made a treaty for our Gregory County Lands, you mentioned five years' payments to us at the time. You said that every person would get \$30.50 annually. Now, my friend, we respect you a good deal because you belong to the tribe, married into our nation, that is the reason we respect you a good deal. You know that. What we wanted and what you wanted we accomplished in full at the time, but you have not fulfilled your promises. You

know that, and we know it. We did not get any \$30.50 per head yearly from that treaty. We have not received it. We know that. My friend, we have been discussing this all last night and have considered this matter carefully and drawn up this paper setting forth what we want and if you do not accept what we have on this paper, you will have to go home without any land. My friend, all we ask for is in this paper and I will say something again when you have read it.

STRANGER HORSE: I have a few words to say. My friend, We will say this to you. Because you belong to the north side [14] we consider we are friends together. That is why we have accepted every treaty you come here to make with the people. Yesterday I said "Wait and consider this matter." I said that if anybody comes here to make a treaty in a quiet and gentle way, we want to consider the matter in the best way we know how. Of course we have not accomplished all we want yet, and I put my hat over it yesterday. Of course that is why I say the Great Father's council forced a law (Gregory County Agreement) upon me and now I want them to stop a while. I thought you understood all the questions at the time and that is why I did not say very much. Last night I put something on paper you will understand. The Rosebud people are poor people. We cannot depend on anybody. In the future we want to make good treaties and we want to make a good one this time. We want to make a good treaty and therefore I want you to notify the Great Father to consider this matter carefully and make a good treaty. Congress proposes a law and leaves it all in the hands of the Secretary of the Interior. When we made that treaty for Gregory County we never mentioned anything of that kind, but he kept the money from the children and put it one side. We did not consent to any such law at that time, but he has done it. I hope that

you will put that one side and make a nice good treaty this time. If you had made a nice good treaty we would have been all right. The reason I say this is that we do not want it so in this treaty. My friend, we call upon you as a friend and ask you to try to help us and assist us all you can when you go to Washington. That is all I have got to say. If you say anything further I might talk again. This is the way we have made up our paper last night and anything you have to say to the people, say it now and then we might answer you.

INSPECTOR MCLAUGHLIN: This paper which you have handed me I will comment upon in order of its numbers.

1st. You will not agree to dispose of any lands until time mentioned under Gregory County treaty expires, and 2nd will [15] not agree to any land sale until after the unallotted children have received land, 1/4 section each.

As to the first and second requests, I may answer them as one, they are really connected. I can positively promise you that, in case we reach an agreement, it will provide for the allotment of lands to all children born since March 3, 1899, and they may be allotted in Tripp County and before the lands are opened. It would take some time to make these allotments and it would most probably be two years before the Tripp County lands could thus be opened and payment for the Gregory County lands would be then about terminated. I am ready to incorporate in the agreement that all children born since March 3, 1899 and up to the agreement is ratified, shall receive an allotment of 160 acres each, and that these allotments be made before Tripp County is opened.

3rd. You say you fully concur with the Secretary of the Interior when he stated some three months ago that the fairest way to open Indian lands is to sell them at

public auction, and he has since then opened lands in Indian Territory by auction. I am of the opinion that you have been misinformed or misunderstood the newspaper reports which you get this information from. Indian lands opened to settlement are not sold at auction. I spent four months in the Indian Territory last summer, in the section of the country this has reference to. The lands were on the Kiowa and Comanche reservation in Oklahoma, and known as the Big Pasture and contained 500,000 acres. Six townsites were reserved from the tract opened to homesteaders. These townsites were appraised and sold at public auction to the highest bidder. They had five townsites set apart on the Osage Reservation. They were appraised and sold to the highest bidders also, and I was present during the sale of some of these lots. The Kiowa and Comanche lands outside of these townsites were appraised and located on [16] by homesteaders. They had a commission to appraise the lands, one of whom I know well, and homesteaders entering upon these lands had to pay the appraised value.

In this connection I will say that in case Tripp County lands should be ceded by you people and opened to settlement, we will incorporate a provision in the agreement which will provide for the setting apart of tracts for townsites, as many townsites as the tract ceded would justify, to be sold at public auction and the proceeds placed to your credit. This can be made to meet your wishes. I have no doubt but that there would be from four to six townsites selected in Tripp County, there being 907,000 acres of surplus land, while with only 416,000 acres in your Gregory County cession they have laid out ten townsites. In this way you would get the benefit of the proceeds of the townsites instead of the land speculator. All the townsites would be designated by the Secretary of the Interior before the land would be opened.

5th. Your fifth item is that "Land in Gregory County is now worth \$20 to \$45 per acre and Tripp County land is just as good." I am not prepared to argue this contention of yours, but I doubt the statement very much. A few individual tracts might sell for that, but I know Gregory County lands too well to accept that statement, and there is considerable of that cession not taken. I also know your Tripp County lands very well, having been over it half a dozen times, and know that while there is much excellent land within its boundaries, there are some very inferior tracts of broken land and some sand in the southeast part.

6th. In your sixth item, you state that you see no reason why you should sell your land for school purposes at a less price than other people pay. I will answer that by stating that all of the states that have been admitted to the Union in the last 40 years have had Sections 16 and 36 in each township donated to them [17] by the General Government, for the public schools of the respective states, and the price that the Government had paid in each instance has never been, to my knowledge, to exceed \$2.50 per acre, and in most instances not exceeding \$1.25 per acre. As I stated last night, you will share equally with the whites in the benefits of this school fund, and under the circumstances, \$2.50 per acre is a good price for the land. The State has to take Sections 16 and 36 in every township, good or bad, unless these sections have been appropriated by an allottee, in which event a like amount in the same township is selected in lieu of it.

7th. You ask that the money due your minor children under the Gregory County agreement to be paid according to agreement. I will answer that when I get through, as there are some of your items here which will be covered by the same remarks.

8th. You ask that those entitled to allotments, but have not yet taken them, be allotted, of which there are about 80 in all. In answer to that I will say there will be no difficulty in that. All beneficiaries of the reservation who have not yet received allotments can be allotted before Tripp County is opened to settlement, and they can take them anywhere on the reservation, including Tripp County. There will be a provision in the agreement to that effect.

9th. You desire that applications now pending before the Indian Office asking to be permitted to change present location of all allotments be acted on before the opening of Tripp County. I can promise to incorporate that provision in the agreement, and you people will be fully protected in that. As I previously stated, it would doubtless take a couple of years to bring about the opening of Tripp County. These allotments are what would delay it. We will incorporate in the agreement a provision that Tripp County shall not be opened until all the children born up to the ratification of the agreement, who have not received [18] allotments, shall be allotted 160 acres each. These two items are already covered by The Burke Bill, which provides for relinquishments and reallootments and allotment to children, and giving the right to take such allotments in Tripp County.

10th. You desire consideration and action in all cases where heirs are seeking to obtain the portion of land that would have been allotted to deceased parents and relatives had they lived. In answer to this I would state that the general allotment act of 1887 and the rulings of the Department under it covers this fully. Whatever the General Allotment Act provides would govern in this case.

11th. You request compliance of Agreement relative to the payment on time specified in the Month of October

in each year. I will say in reference to that, that in case we enter into an agreement, when we reach that section where it should be included, we can discuss that matter fully and have it distinctly understood. If we reach that point, we will not let that prevent us from making an agreement. But as having a direct bearing upon this, I would here say that provision should certainly be made for furnishing stock cattle. The only way you people may become independent is to stock your own ranges, so that you will not have any cattle but your own upon them.

12th. You request that the proceeds from the sale of Tripp County lands be paid to the Indians, minors and adults, in October of each year, and that all the money so received in each respective year shall be paid at such payments. This is a matter that is open to discussion and we would have to talk it over between us when we reached that part of the agreement.

13th & 14th. You desire the Lower Brule agreement to be carried out, etc. My friends, you know my attitude in regard to that agreement and you know the statement I made to you in 1898, eight years ago last March. I stated my honest convictions [19] at the time, and your Agent at the time, Dr. McChesney, verified my statement and corroborated it by having read the same letter that I had. It was a letter written by Hon. Hoke Smith when he was Secretary of the Interior, and authorized the Commissioner of Indian Affairs to make payment to all allottees under the act, over 18, said Act being Act of March 2nd, 1889, after reaching their 18th year, but the new Secretary changed that, directing that the benefits of Sec. 17 of the Act should only be paid to those who were 18 years of age or over when the allotments were authorized. I perceive by your talk that the one thing which displeases you most of all is that of having the shares of your minors withheld, that is, the proceeds of the

Gregory County agreement, and I desire to make a very careful statement to you as to the views taken on that question by the Interior Department officials.

As to the shares of minors, that is, those under 18 years of age, being returned to the United States Treasury to await the beneficiary arriving at the age of 18 years, I wish to explain this phase of the question very particularly and trust that I may be able to bring you to understand the reasons influencing this policy. In withholding the money of minors until they are 18 years of age, the Department is thus dealing with the Indians in the courts throughout the several states require of white people in cases essentially similar. The money in question belongs to the children and not to the parents, and the courts, in cases of similar character, inquire into the capacity of the parents as to their intelligence, sobriety and general characters, before even allowing them to become bonded guardians and take charge of the estates or monies of their children. A parent who is indolent and imprudent in managing his own affairs and conducts his own business in a weak and indifferent manner is not permitted to handle the money of his children even should he be able to furnish the required bond, which is not easily obtained under such [20] circumstances. It is true that the Sioux Indians are making commendable progress, but it is doubtful if the average Sioux Indian of today could obtain a bond which would be acceptable to the court if he were to apply for the legal guardianship of his child, with the right to take charge of the child's money, and account for it properly when called upon by the court as required by law.

I am advised by the Commissioner of Indian Affairs that he has caused to be prepared, upon information obtained from trustworthy sources, a list of the Indians of the Rosebud Reservation who are temperate, prudent,

honest and otherwise fitted to take charge of the money of their children which list is designated a "Roll of Honor," and to the persons whose names are on the roll, your Agent has been instructed to pay the Gregory County land money of their children.

The Commissioner also advises me that Indians not on the said Roll who are ambitious to be included in it, can have such ambition gratified by fitting themselves for enrollment thereon, on the same lines on which those now on the roll have proven themselves as worthy to be there; and also that any Indian now on the Roll is liable to have his name dropped therefrom by departing from the straight forward path as marked out by the Department. The purpose of withholding the money of the minors until they attain the legal age as which they are expected to be able to properly transact business for themselves, is purely benevolent. It is the law of every state in the Union and has been adopted by the Department in the interest of justice to the children who have a right to demand just treatment from their guardian who is trustee of their estates and bound by law and justice to conduct their business affairs in a manner which will best promote their welfare. I have known of many instances, particularly at the Sisseton Agency, where valuable estates of minors have been fritted away by their [21] parents, or Indian guardians, who had themselves appointed to such guardianships, and when the wards reached the legal age and demanded a settlement, the estates had been squandered and the bond so worthless that the wards were left without anything, and without redress, as nothing could be obtained from either guardian or bondsmen, and it is to obviate the possibility of such waste of the estates of minors that the Department has adopted the policy of withholding their shares until they reach the age of discretion, except in

instances where the parents have proven themselves deserving of having their names placed on the Roll of Honor, and deemed worthy to be intrusted with the care and disposition of the shares of their minor children.

My friends, I have endeavored to make this phase of the question quite clear and trust that you may now appreciate the attitude of the Department in this important matter; that this policy is in the interests of justice to the minors who will ultimately receive their full shares, and this explanation should disabuse your minds as to any injustice being done you in the premises. If you look at this matter in its true light, you cannot fail to arrive at the conclusion that your contention in this respect is not well founded.

I will now say that I am very much pleased with the result of your meeting last night. You have formulated a paper which gives us a basis or ground work to start upon. Whilst there are some things mentioned in it that I regard entirely unnecessary, still there are some very good points that I am willing to adopt. The most serious contention to agree upon is your article 12. I know the policy of the Department in relation to the payment of the money of minors to the parents so well that I fear this to be the most difficult to adjust. It is true that Sec. 5 of the Burke Bill gives the Secretary of the Interior full discretionary power as to how the proceeds of the Tripp County lands shall be expended, but I believe that an agreement can be worded that will meet your [22] wishes in this respect, by changing that section of the bill slightly. This for the reason that my letter of instructions says that the special needs of the Indians should be inquired into. Their Agent should be consulted and a plan for the disposal of the proceeds should be formulated that will tend to promote the welfare of the Indians and start them on the road to civilization and self-support. If

stock cattle are needed, provision should be made for their purchase with a part of the funds to be derived from the cession, and the agreement should not provide for the payment of any large sum or sums to the Indians in cash.

The Department feels that the disposal to be made of the proceeds arising from the cession is a subject requiring most careful and earnest consideration, as experience is convincing that annuities and the issuance of rations to Indians is detrimental to their welfare.

My instructions prepared by the Commissioner of Indian Affairs and approved by the Secretary of the Interior, directs me to consider these matters and place them before you, and it is to arrive at what will be the best interests of you people that I have been sent here. You appear to be very fearful of Sec. 5 of the Burke Bill which leaves it discretionary with the Secretary as to how the proceeds of Tripp County shall be expended. My friends, I can assure you that the Secretary and Commissioner have your best interests at heart, not only your interests but the interests of all Indians, and should the expenditure of that money be left entirely in their discretion, you would not suffer in any respect as your interests would be well guarded. We can, however, incorporate some item in the agreement which will make that feature better understood by you and meet your wishes. The settlement of a disputed question is often adjusted by compromise, which means that each party to the contract concedes some point and we may be able to thus effect an agreement.

[23] I have consumed considerable time in making these explanations and some of you may now wish to express yourselves regarding the matter.

RALPH EAGLE FEATHER: My friend, this is our wishes to have \$5 per acre and we put that in writing. I want you to look at this (hands clipping from Gregory

County newspaper) very carefully and look at that and consider it. Here is another one, 160 acres, two miles from Dixon, all broke, 160 acres. (Hands another clipping) We know this amount and want you to consider this very carefully. You say it cannot be \$20 per acre. There is \$20 right there. (Hands another clipping) I wish you would hear me what I have to say. You have bought our land very cheap and then when you sell the land you get high prices for it. You know we are poor people and when you come here you try to fool us with the prices you offer us for our land. Now look at me my friend. We are Indians and when we received annuity goods and the children did not get any money, we did not care for it. Now the annuity goods have expired. There are no more annuity goods. We work for \$1.25 per day and when we work we eat it up. Our children are at school, ragged. Nothing on our children. Now this is what you have accomplished for us here. Here is the treaty we made with you in 1901 which you have stepped over and now you want more land again, the land we depend on in the future. We want to get full pay for the land we sold you and something to eat from it. We are saving that Tripp County land for ourselves. The terms made in that Gregory County agreement have not been fulfilled and have been changed. Somebody has held it back. My friend, you love money. Everybody loves money. You were sent here. You were willing to come to work amongst us. Now we want our children's money. We are looking towards where the money is. We want it for our children according to agreement, in 1901. There is an objection I have against that Burk Bill. It leaves everything in the Secretary's hands. He would have it all his own way. We [24] could not do anything. He has held our children's money back, but we never gave him any law to do so. What are we going to do? We are poor

people. He ought to take pity on us. You have said a while ago that Congress is strong. When the Congress passed a law and fixed this thing up for us, the Secretary stepped on Congress. My friend, they propose giving full power to the Secretary in this matter. I hope you will appeal to them for us and take that off. Now we want a good deal of money for that Tripp County. That is not as much money as it is worth. Tripp County is better land than Gregory County. If we get the money ourselves we can do well with it. We want to have the full amount of the land paid to us in cash and in that way we can buy our own stock and cattle. That is all I have to tell you my friend.

(Hands Inspector an extract from pages 15 and 16 of the minutes of the councils held from Sept. 5 to 14th, 1901, for the surplus lands in Gregory County, So. Dak., which he requests to be incorporated in the minutes of this council.)

EXTRACT.

INSPECTOR MCLAUGHLIN: This price, I offer you, amounts to a large sum of money. Your unallotted lands in Gregory County approximate 416,000 acres, which, at \$2.50 an acre is \$1,040,000, and I suggest the following manner of payment: Fencing out boundaries or your reservation: building dams and reservoirs to retain water where required: \$40,000.00

Stock cattle (2 year old heifers and graded bulls) 250,000.00

Cash to be paid in five annual payments, Total 750,000.00

Total \$1,040,000.00

This \$750,000 to be paid in 5 annual cash payments of \$150,000 each.

The census rolls show 4,917 persons belonging to this agency, which would give an annual per capita of \$30.50, that is \$30.50 once a year to each man, woman and child for a period of 5 years, aggregating \$152.50 that each man, woman and child would receive in the 5 years. At the expiration of 5 years, when this per capita payment would end, the material increase derived from your stock cattle, would then be marketable, and continue to furnish a large number of beef cattle annually thereafter, which would place you upon an independent footing, and, with proper care of your cattle, would insure you a regular annual income.

INSPECTOR MCLAUGHLIN: My friends, Ralph Eagle Feather has handed me these clippings of a newspaper. They are from the Gregory County News, designated "Prosperity Number" and to have it more catching to the eye, more attractive, they have printed it on pink colored paper. These, my friends, are not actual values of land. This is to mislead. As Todd Smith said yesterday, some white men [25] are pretty smart. These advertisers and this newspaper want to bring more men into the country and expect to bring some tenderfeet, induced by these high-sounding advertisements. I would dislike to offer those men half the price they ask in these advertisements, for I know they would take me up quickly, but I am very glad to get this, because I want to show this to the Secretary and Commissioner.

STRANGER HORSE: Now we have judged and put all we want in writing and given it to you. This is the way I think about it. Some of our people here have no land. Some of our children from 4 to 5 years old have not land yet. This is what we have said in that way we want you to wait. That is what we want and when you get home speak this to the Great Father and appropriate some money and send someone here to make the allotments right away.

You came with this bill. We are not ready to enter into any agreement until these allotments are taken into consideration. Now we have been getting our Gregory County money for three years. I suppose the Great Father has the names of those who have got the money. Since we have got our pay these three years, a great many of our children have died and did not get their money. That is what we want to know, what are you going to do with the dead children's money? That is the reason we want to hold on a while. That is all I want to say to you.

HE DOG: Every time you come here, we all take good care of you and treat you well, and I want you to know that lots of these people have lost their children since you were last here. My friend, I will say that you have said some good words, both you and the Indians, but while we are waiting on our children's money we keep dieing, a good many of us are dead now. I am a man who has not yet got an allotment and I am going to wait until I get my allotment before selling more land. My friend, that is the word I want to give you. I want you to keep it. My friend, we are [26] Indians and you ought to have mercy on us. Since you went away from here the last time we have been looking toward you every year for our children's money to come. I will say this, that if you had paid the children's money at the time you promised, our hearts would have been good and if you came this way again we would have been glad to receive you. Now, my friend, that is what I have to say.

INSPECTOR MCLAUGHLIN: My friend, He Dog, made a remark that made me feel very pleased indeed. He said that I have visited your agency often and that you had always received me and treated me well here. That is very true and I appreciate it. I have a good many friends among the Sioux and there are no Indians, not even excepting those of the Agency at which I remained for so

many years, that I respect more than I do the Rosebuds. I know you people well, having been brought in contact with you so many times. My heart goes out to you people to meet you half way in every reasonable proposition that you make. I am very pleased with your work of last evening. Last night you remained up until 1.30 I understand, and instead of turning your backs upon this proposition and going home without considering it, you, at my request, met here last night and talked the matter over among yourselves and formulated this paper which shows good intention and much ability. There are some powers delegated to me in negotiations of this kind. They are limited. That is, I can go so far and no farther, but I feel and fully believe that we can come to an agreement. It may be possible however that before we can reach an agreement that will be satisfactory to both yourselves and to the Department officials, it will be necessary for me to visit Washington and confer with the Secretary and Commissioner and, if I should go there, I would want to have something pretty definite to take with me, and I would like very much if you people would select a committee of 10 or 12 to meet me tonight. We will spend this evening in some room and [27] we will see what we can accomplish in formulating an agreement. Your Agent will be with us and I think it advisable that you people consider this matter and select a committee, and we can then, in the course of two or three hours, accomplish a great deal. All we could do would be to simply arrive at something that would not in any way be binding upon you, but get it ready for submission to the full council when it is again reconvened. It could then be explained to all of the Indians that would be here and we could thus get a general expression from them. I will now leave you for a few minutes to consider the matter and will be in the Agent's office when you desire to have me return.

HIGH PIPE: We have a large Agency here and a good many people from 18 years up, and they told us to say something and thus gave us the power, so we said it. I think we should leave this matter until about Tuesday morning and then consider it again, because since I heard you were coming I have been here and I feel like going home tonight. That is all I have to say.

(To Agent Kelley) My friend, you sit there and draw your face down all the time and do not look natural. You do not laugh and smile like you used to.

AGENT KELLEY: I am thinking what can be done for the good of the Indians and I have their good at heart and am trying to think of some plan that an agreement can be made that will be to their interests. So if I appear serious that is my reason for it.

INSPECTOR MCLAUGHLIN: I will say to my friend, High Pipe, and to all those assembled here, that the request for adjournment until next Tuesday is very reasonable, and to show that I desire to meet you people in every reasonable way, we will adjourn until Tuesday, but I hope to have a good representation of you here then, and I wish you would appoint a committee to talk matters over with me in the meantime.

(Council adjourned at 4 P.M., until Tuesday morning, Dec. 1.)

[28] December 18th, 1906.

Thomas Flood, a progressive mixed blood of the Rosebud Reservation, reported this afternoon that, owing to this being beef issue day at the sub-issue stations, very few of the Indians were at the Agency and those had arrived were at Spotted Tail's house counseling among themselves, discussing the proposition submitted to them, in consequence of which it would not be advisable to convene the council until tomorrow, which was concurred in, and the meeting postponed until Wednesday, the 19th.

Council reconvened Wednesday, the 19th, at 2 P.M., with about 100 Indians in attendance.

INSPECTOR MCLAUGHLIN: (Louis Bordeaux interpreting) My friends, having again assembled after three days' adjournment, during which time you have been discussing the matter among yourselves, I trust that you have arrived at some conclusion which will enable us to proceed understandingly in our negotiations. I am now ready to hear what you may have to say regarding the matter, and would wish you to express yourselves freely so that I may explain every phase of the question not fully understood by you.

RED BULL: I want to say a few words before Hollow Horn Bear makes his speech. Some of us have given Hollow Horn power to speak for us and we have the names on this paper for whom he will speak.

HOLLOW HORN BEAR: My friend, I heard you were coming here some time ago. I thought this way, that I would see my brother today and that my brother had come here for my protection. Before I arrived, my friends here wrote something on paper and presented it to you. The people over 18 years of age who live with me have given me the power to speak for them. If they had not given me that power, I would not be occupying the floor and making this talk. What I want of you I expect you will agree to. That is the reason I came. We have treated with you in the past and then I stood with three-fourths of the people. I suppose you know that I aided you and worked for those past treaties. I was [29] thinking that I have a brother and when I want to talk to him I want to talk to him straight. Now I come here today, my friend, and I learn that some of our people have put something on paper and handed it to you, one of which I do not like and I will tell you of it. It is that the land shall be sold at auction, that is what I do not like. I do not want that.

The Great Father wants us to make an agreement. I want \$5 per acre for the entire tract and I want the Great Father to pay for it. I want the Great Father's council to pay for this land at \$5 per acre straight, to guarantee it. I do not want to go above this \$5 per acre or to go under it: \$5 per acre for the entire cession is what I want. If this can be done, it is what I want. I do not want the Secretary to have entire control of the proceeds as provided in the Burke Bill. My Agent will be here and I want the agreement made so that the money will be paid in and then I can come to my agent and tell him what I want from the proceeds of this land. That is what I want. I want it to go through my agent here. If I need cash, my agent would ask for it and get it for me. There is something more. Some of us have children at our homes and I want the money so that we can get it for them. I want the money to be placed in the U.S. Treasury the same as former treaties were made. I want to say one thing more. In the Gregory County land that we sold, we missed one issue of cows and lost a calf from each cow by it. In the second year we lost the increase of the calf again. We want the Great Father to pay for these calves which we lost. The value of the calves if \$5 per head. I want to say that if this is to become a law, we want our children who have no land to first have allotments and another thing I want is that the heirs of persons who have died since the Gregory County lands were opened be paid these shares without the expense of going through the probate courts, the cost of which is more than many of them would receive. The Great Father tells us that we must fix that in the Court, but we are poor and not able to do that and we [30] wish that to be paid here at the agency. The money was due to those dead persons and I want the Great Father to send it to my agent here and he can pay it to the parents or heirs. There was many

complaints against the Gregory County opening. The minor children's money has been withheld for them and I want the Great Father to pay that to the parents. I do not want any change from paying to parents the money of their children, that is the reason I tell you this. The Great Father can attend to this. I do not want any change in this, as I want this very much, and that is the reason I tell you of it. My friends here thought of other things which they have spoken to you about and I am not going to mention them as you already know them.

As I told you before, those young men have given me the power to speak for them therefore, I believe I have spoken straight not forked. That is all.

INSPECTOR MCLAUGHLIN: In reply to my friend Hollow Horn Bear, I desire to say that there is very little difference in his proposition and what I am prepared to consider. The principal difference is that he demands \$5 per acre for the entire cession and for the Government to guarantee the payment of that price. As to that, I wish you to clearly understand that Congress for the past five years has absolutely refused to consider any agreement for the cession of Indian reservation lands which stipulates a lump sum payment or binds the Government in any way to purchase the land or to find purchaser for it: The Burke Bill, which I read and explained to you at our first meeting, provides \$5 per acre for all land taken the first three months, \$4 per acre for all land taken in the following three months, and \$2.50 per acre for all taken after the first six months and \$2.50 per acre for the School section. If that land in Tripp County is as valuable as you all say it is, there is no doubt that every acre of it will be taken in the first three months at \$5 per acre, the price stipulated in the Bill. I do not, however, expect that it will all be taken [31] in the first three months, but all the good land will undoubtedly be taken in the first three

months, there is little doubt of that. The rush will be as great as when your Gregory County lands were opened and all land suitable for farming purposes will doubtless be taken the first three months at \$5 per acre. You must bear in mind that this agreement provides for the opening of Tripp County the same as your Gregory County lands are being disposed of. That the man who files upon a tract of land has to pay one-fourth of the purchase price down. The remainder is divided into 5 annual payments, payable at the end of each year for 5 years. For instance should I file upon a piece of that land and pay \$5 an acre for it, I would have to pay \$1.25 per acre down. Major Kelley here might come along and say "I will give you what you paid in and something more if you will let me have that place." Should I sell it to him, he would then have to pay \$5 per acre for it as I had done, paying \$1.25 down same as if it had never been filed upon. No matter how many payments or how much money any man may have paid on his homestead, if he has not received his final patent and relinquishes in favor of another person, that money all goes to your general fund in Washington and the man who purchases it has to pay the same price for it that the man who first filed upon it did.

That land which I negotiated with you for in 1901, for a lump sum consideration of \$1,040,000, will, under the plan that it was opened, realize for you people over one million four hundred thousand dollars, considerably more than \$800,000 of that amount has been paid into the Treasury already, with three payments yet due on most of it, and a portion of the land has not yet been filed upon or disposed of. It now looks as though there will be \$1,600,000 from your Gregory County lands, or about \$500,000 more than you would have received had the lump sum that I agreed with you for been paid to you. Major Kelley has a statement here [32] which I will ask

him to read so that you may understand it fully. I mention this that you may know that this system of disposing of your lands is the best that can be devised and and insures to you people every dollar realized from your lands.

As to your Tripp County lands, you are sure of getting \$4 per acre for all filed upon the first three months, \$4 per acre for all filed upon the next three months with the benefit of all those who may relinquish their entries in favor of someone else.

As to paying interest on money that is placed to the credit of Indians in an open account which is being drawn upon from time to time, such has never been done by the Department to my knowledge and I doubt if Congress would authorize it. A permanent fund can be placed at interest, but open accounts cannot. All permanent funds usually draw interest from 4 to 5%, whatever is agreed upon. The Great Sioux Reservation fund is drawing interest because it was placed to your credit in the U.S. Treasury to remain there intact until distributed among you. A provision might be made in the agreement that as soon as the monies paid in had reached a stipulated amount, to place it in the U.S. Treasury as a permanent fund at interest. That is, when the sum collected reached say half a million dollars or a million or whatever was agreed upon. It might be placed in the Treasury as an interest bearing fund, but to have it draw interest and remain an open account, I doubt if it would be allowed.

With these two exceptions, my friend Hollow Horn Bear has made a very good talk. His speech was quite logical but I thought best to explain these two questions while fresh in your minds. That is, as to interest on money other than a permanent fund, also in regard to the \$5 per acre for the entire cession with a guarantee of the Government to find purchasers for the land, which could

not be incorporated in an agreement and [33] therefore cannot be entertained. I would state that if you people wish to have the proceeds accumulate until sufficient has been collected to create a reasonable permanent funds, say half a million or a million dollars, I would be glad to provide for it to draw interest as you request. You should now understand those two questions and I will ask your agent to read a certain item from a newspaper which he has, it being a statement of your Gregory County land sale which Congressman Burke obtained from the Department and the figures are undoubtedly correct.

AGENT KELLEY: This is just as Mr. Burke told me at the time he was here. It is now published in a Gregory County paper and I will read it from the paper. You can see that the land is bringing more money by considerable, as our friend, Inspector McLaughlin, just told you, than it would the other way. The amount of land disposed of is the ceded portion of the Rosebud Reservation and amount of money received therefor, up to Dec. 31st, 1905 (that is one year ago) there have been made 1881 homestead entries of the \$4 class, that is, over three fourths of all the homesteads that were made down there, over three-fourths of them at \$4, that is the highest price, you know. That is 300,960 acres. Do you all understand that?

VOICES: Yes.

AGENT KELLEY: 420 entries of the \$3 class. That is, 21,898 acres. 304 entries of the \$2.50 class, that is, just a little over 38,000 acres, and there were 29,543 acres given to the state for school land, for which you received \$2.50 per acre. That makes \$73,858.75 for the school land. The money for these school lands was paid into the Treasury by the Government for the Indians. Since Dec. 31st, 1905 and up to September 30, 1906, that was 9 months, there have been 240 more homestead entries

made of the \$2.50 class. That leaves 450 homesteads of 160 acres each not taken. The whole amount of money received [34] and paid into the Treasury to the credit of the Indians up to September 30, until three months ago, is \$827,707.72. That is already paid in, up to Sept. 30 and that is nearly three months ago.

HOLLOW HORN BEAR: I have said some words to you, my friend, as you have stated two things regarding them. It is impossible for us to fix this up at this time. In the past, all treaties our forefathers made, the Government always paid for the land, up to the Crook treaty. Now the Great Father is not paying for the land himself. My friend, whatever is said in our paper you take it to Washington and have Congress fix it up this way. It is like if I want to buy your watch, and after buying it some other person comes along and says I will pay that purchase price for you. It would be the same as those settlers going to pay for this land. I am afraid of that. The Great Father should pay for the land himself. What I say here you can present to Congress and if they do not like it why just let the land alone. Those people who bought our Gregory County land have not paid for all of it yet, and if they had paid for it all and you asked for another piece of land, we would not be afraid of it, but they have not paid for it in full, but you ask for more and we are afraid of that. You just told us that there is much of that money due yet. The Great Father has not yet paid for some of the land that Gen. Crook bought. He has got us into a tight place. I promised the young men that I would say this and I have said it and I do not want to cut up my words.

INSPECTOR MCLAUGHLIN: My friends, I must correct my friend Hollow Horn Bear again. You are receiving payment for your Gregory County lands exactly as provided in the act of Congress opening that tract. The

first 1881 homesteaders who entered and filed upon that land paid \$4 per acre for it, according to this statement your agent has just read. They paid \$1 per acre of this down at the time of entry and the other \$3 per acre was [35] divided into five equal parts, being 60¢ per year for five years.

The Government in your Gregory County cession, as trustee for your people, disposes of your lands, collects the money from the entrymen and places it to your credit, every cent paid in being promptly placed to your credit. The Government is a just and fair guardian and will see that every one of those homesteaders pays for his land in full before he acquires a clear title to it. You will receive every farthing that the land brings, under the system which it was opened under, and the same system is provided for in the Burke Bill, but the prices are much higher, commencing with \$5 per acre, then \$4 per acre and the lowest price \$2.50 per acre. The relinquishment of some of the claims by the entrymen and the filing upon them by other parties as I have heretofore explained, increases this fund materially. You have an opportunity to be a party to an agreement for the opening of your Tripp County unallotted lands, and having explained it repeatedly, you must all know that the right is vested in Congress to open Indian lands without the consent of the Indians. But the Secretary of the Interior and Commissioner of Indian Affairs, who are charged with the care of the Indians and custody of their funds, are desirous that Indians be consulted and their consent obtained if possible and this is the reason I was sent here to submit the question, with the hope that you would accept a reasonable proposition. Hollow Horn Bear has said, "Take this back and let Congress do as it may choose with it." That is not the right feeling it is not the right spirit. You should not become sad-hearted over it.

You should think out what would be for your best interests and meet the wishes of the Government in a reasonable way. It is difficult to find 50 or 100 persons of one mind on any proposition in the beginning, but by discussing and considering the question carefully, they may come together as one mind. The question before you is one of great importance to you people, and as I stated in council a few days ago, I am [36] willing to concede anything reasonable to meet your wishes that I can recommend to the Department. I would be grieved to be obliged to report to the Secretary that one fraction wanted it a certain way, another a different way and some others did not agree with either of the other two factions. I want you to agree on something definite so that I may be able to aid you.

HOLLOW HORN BEAR: I thought you asked the question as to whether we would sell the land or not. I thought that was your question. I understood you to say that you would take those words home and let Congress do as they wanted to.

INSPECTOR MCLAUGHLIN: I understood that you wanted me to take what you said back with me to Washington and if Congress did not accept it, to let them do as they chose.

HOLLOW HORN BEAR: I said this way, at least it is what I intended. "You take our answer and requests back with you and present it to Congress and if Congress does not act on it as I say, leave the land as it is. I did not say that the Great Father can do everything to suit himself or the Great Father's Council. I am not sorry for what I said, but if the Great Father's Council takes that land away from me without my consent, I will be very sorry over it. Our forefathers used to make treaties and by making treaties we lived all right without any trouble, and I wish to make this treaty, because when we are all

dead the white people would have no trouble in taking all the lands. I did not come from any place as a prisoner, but was born and grew up here. I did not come here on somebody else's land and was not a prisoner when I first came here. We thought this agency was a honorable place, respected by the people and the first party to make treaties of peace, and I always considered it so. Our forefathers made a treaty with the Great Father and signed an agreement and we had peace. The treaty of 1868 mentions an article that says that the consent of three-fourths of the Indians to an agreement would be necessary to have it become a law. If [37] three-fourths did not sign the treaty there would be no treaty at all, and I do not believe that anybody is going to force me to give up my lands. Of course if we do not want to sell these lands and if the Great Father takes them against our wishes, I suppose he will take the rest of our land too. What are we going to do about them? You have explained all about Gregory County treaty, word by word. We have been paid something each year for the last three years, but we have been suffering. We ought to be paid in full. The Great Father paid for those school lands. The money paid us did not come from the settlers, it was from the school lands alone. That is what I think. Those settlers asked Congress to let them have an extension of their payments for one year and I understand that it was granted. I thought this last payment was going to be a double payment, but it was not. In our treaty it never mentioned that our minor children's money should be kept back in the Great Father's hands, but it is. It has been tied up. All entitled to a share of the Gregory County money have to take oath before they get payment, but it was not so in the past. We never did that before. When we made that agreement we were told by you that each and every one of us, grown people and

children, should have so much money for 5 years. We thought we made a good agreement, but we were disappointed and our young people are feeling bad over it. Some of those who signed that agreement get very little benefit from it, as some of their children have died and got nothing from it. They are standing that way now. This Burke Bill, if it goes through, says that all payments are to be in the hands of the Secretary. That is another thing we are afraid of, because of our treatment in the Gregory County payment. Our forefathers made such a treaty as that and they give us some ploughs that we did not need, so we used them to make bridges on the creeks. The reason was that the ploughs were no good. They ought to give us something better than that. It is this way, my friend, I told you that I like you [38] and regard you as a brother. I understand it this way, that Congress always sends you here on business that they do not want any mistakes made in. You are not to blame for this, Congress is to blame. My friend, I like you and now you can go home and tell them what we said and if it cannot be done as we want, let our land alone. Now I talk all right as I respect you, but Congress is the one who wants to make me trouble by taking my land away without cause. Of course there will be trouble. I told some of those young fellows to go and do something for themselves, but they would not listen, they said, I am not going to stay here, as the Great Father is going to take our land. I am not going to stay here myself. I am going off with a show. Of course, whatever my friends here and myself have said I want you to take that home and show it to the Great Father's council. I am not sorry for anything at all myself. It is the young men here whose complaints I am relating. I stand here looking at them and I believe they tell the truth. That is all.

INSPECTOR MCLAUGHLIN: There was a question raised a while ago that I omitted to answer in regard to the cession of your lands in the agreement of 1889, the so called Crook Treaty. The statement was that you had not received payment for those lands yet. I wish to tell you that every dollar that your lands brought under that agreement has been placed to your credit and when all of the Sioux Reservations have been allotted, a general settlement will undoubtedly be made. The money has been received and placed at your credit for every acre of that land. My friends, I am not here of my own volition. I have been sent here by the Secretary of the Interior to present this matter to you. My heart goes out toward you people and were it in my power to grant you everything you ask in this matter, I would be inclined to do it, but I am quite familiar with land matters and Indian land matters especially, and I know about what the Department would be willing to approve and Congress be likely to ratify, and wish [39] to guide you along those lines.

My friends, I know and many of you know, that the sentiment prevailing throughout South Dakota and throughout the States bordering on South Dakota, is for the opening of Tripp County lands, and that a pressure is being brought to bear upon the delegation from this state and from the adjoining states to bring that about during this session of Congress. There is very little doubt in my mind but that the legislation necessary to open Tripp County lands will be enacted before this Congress adjourns, the 4th of next March, and as your friend and a person who is willing to do anything within his power to meet your wishes, I wish you to unite upon something definite which I can present to the Department and which the Department officials can recommend to Congress. I want you to get together tonight because I wish you to meet me again tomorrow. The time is passing

rapidly. I have been here a week and over, and there is no necessity for us to continue our councils indefinitely when we should be able to reach a conclusion in one day. I would like to know your minds in relation to the Burke Bill, which I read to you, and the changes, if any, you desire to have made in it, and have you arrive at something definite that I can take back to Washington with me and show to the Secretary and Commissioner together with the minutes of our councils which will show all that has been spoken by myself and by your speakers, that they may thus know the feeling of you people and your desires.

My friends, in considering this matter among yourselves and presenting your conclusion to me, your demands should not be unreasonable. They should be along lines that would give me an opportunity of making an argument for you before the proper authorities.

STRANGER HORSE: I want to say a few words in regard to what you have said. Of course you are always in a hurry and keep urging us and you are quite right as it seems that we cannot come [40] to a conclusion in anything. The Indians are Indians and they have no understanding and they cannot understand anything at all. Beginning now, you ought to give them several days council among themselves and they would have something done at the end of that time. We concluded to make a statement of our wishes and present it to you. That is as far as we can have an understanding. The best terms we have to state we have told you now. Take home what we have said and then come back with it if the Department and Congress is willing to accept. It will be easily understood by the Great Father. That is what I have heard. I always get news from there. (Hands clipping from newspaper in relation to sale of Big Pasture lands on Kiowa and Comanche reservation, Oklahoma) There is

one thing we insist upon and we will stand by that. There are children who have no land and there are some of these Indians who are not allotted yet. You go home and tell them to send some man out here to allot those children and other persons who have no allotments and then we will see about selling Tripp County. We are a big tribe here and it is impossible for us to go around and ask everybody to get their consent in haste. I myself have been here two weeks now and I am tired. You came here for this one purpose. I had a good many things to think of, but now all my thoughts are gone and I am tired of it. My friend, this will be our last council and whatever we conclude today we are going to respect and have you take it home, so we have done now and this is the end of it. You promised us you would help us and we presented a paper to you and our wishes are on that paper. They are the wishes of the people. We approved of what is on that paper and we cannot say any more.

INSPECTOR MCLAUGHLIN: In reply to my friend Stranger Horse, I will say that I wish to have you fully understand without any mistake about it, that the allotment of the children, as also allotments to those who have not yet received allotments and to persons whose present allotments are to be relinquished and other [41] allotments made to them instead, will be provided for in any agreement that we may enter into and that before Tripp County is opened. That will be distinctly understood, and the privilege of taking their allotments within the boundaries of Tripp County will be provided for in the agreement.

HOLLOW HORN BEAR: I suppose if we come to any conclusion in this matter and we let you know in the morning, that will be the the end of the council.

INSPECTOR MCLAUGHLIN: My friends, I do not want to hurry you in this matter, but I feel that we are

consuming a great deal of time unnecessarily and after our talk today, by counciling among yourselves tonight and meeting me in the morning, we should be able to reach a conclusion tomorrow. There are many things that you may not understand which your agent or myself could make clear, and for that reason, I think, more could be accomplished here with us to explain matters than by counciling among yourselves. My friends, you say that you presented me a paper the other day and will stand on that, but there has been a great deal of talk today very different from what is stated in the paper, and I would like to know if that paper is still what you wish to stand upon, or if there is something that you want to change in it. There are a great many things in that paper that are sufficiently clear, but there are others too indefinite, not clear enough to submit to the Department in their present form and that is why I want to meet you again tomorrow that we may arrive at some conclusion after you have councilled among yourselves tonight.

HIGH PIPE: My friend, it is over two years since Gregory County was opened. Two years is a long time.

INSPECTOR MCLAUGHLIN: Two years is not very long. It soon passes round.

HIGH PIPE: If it is so short wait until two years passes and give our children who have no allotments lands and then we can talk about Tripp County.

INSPECTOR MCLAUGHLIN: As I told you before, Congress [42] will not wait that long. Any agreement that we may enter into providing for the opening of Tripp County will protect your children by allotting them. The legislation will be enacted providing for the opening of Tripp County as soon as the allotments are made.

HIGH PIPE: I want to adjourn this council until next Monday that we may council among ourselves in the

meantime.

INSPECTOR MCLAUGHLIN: In reply to my friend High Pipe, I will say that all the people are here that are needed to consider this matter and I cannot consent to another adjournment of four days. I want you to talk this matter over among yourselves tonight and we ought to conclude our council tomorrow. I am not going to require you to sign an agreement at this time, simply to arrive at something reasonable which I can submit to my superiors.

HIGH PIPE: Well, we will council to tonight and meet you tomorrow morning.

(Council adjourned at 5 o'clock, to meet Thursday, the 20th)

(Council reconvened at 10 o'clock, Thursday, the 20th)

INSPECTOR MCLAUGHLIN: My friends, I have learned that you were in council last night until after 2 o'clock this morning, and am pleased to see you so promptly here this morning. I hope you are now prepared to submit an answer in relation to this matter. I am ready to listen to you.

HOLLOW HORN BEAR: Whatever we are going to say we have printed here on this paper. I am going to say one word on this paper. That land belongs to us. As you say that the reservation may be opened without our consent. Therefore I want to say something about it. I can say this. This land belongs to me and I will ask a price for it whatever I think is best for me. We know this reservation is going to be opened. We all know that in Indian Territory there was some tribe that sold land and they asked a certain price and they would not grant it to them and they [43] went to work and opened their land without their consent, and the same was taken to the Supreme Court. After all the Indians were paid what they

demanded. I am going to hand on to what I ask for my land. There are words we have put in writing. (Hands Inspector paper)

INSPECTOR MCLAUGHLIN: Am I to understand that you substitute this paper for the one you prepared and handed me last Saturday?

VOICES: Yes.

INSPECTOR MCLAUGHLIN: And that you want the paper which you handed me last Saturday withdrawn? Is that understanding correct?

VOICES: Yes.

STRANGER HORSE: Some things in the first paper are in this one so we take the first paper back. All that we want is included in this paper. We withdraw the other one.

INSPECTOR MCLAUGHLIN: In relation to your first and second clause in this paper I wish to say that \$6 per acre, as demanded by you herein, is a very large price, and that \$5 per acre for the second choice is altogether too high, and the remainder at \$4 is exceedingly high. I fear that Congress may not consent to this \$6 per acre price even for the first choice, and you are well aware that the great bulk of that land, the desirable farming land, will be taken when the rush takes place. All of the good land in the first three months. The great bulk of your lands will bring the highest price that may be provided for in the act. As I stated to you the other day any questions that is being discussed between parties upon which they cannot come to an agreement in the beginning, may be affected by a compromise, each party conceding some particular point. You demand \$6 per acre in this paper. I am willing to leave this remain for the present with the understanding, however, that in case the Department should disapprove and Congress refuse to ratify it that a compromise as [44] to the price might be

effected by agreeing upon \$5.50 per acre for the first selection. I will submit this paper and do everything I can to have that \$6 per acre accepted for first choice land, but cannot promise that, for the second selection, all that you should expect, and it is very reasonable, would be \$4 per acre instead of the \$5 demanded and I doubt if a higher price would meet with approval.

If such meets with approval, the price would then be \$6 per acre for all taken in the first three months and if this price cannot be secured, you should consent to split the difference and make it \$5.50 per acre. Then \$4 per acre for the next three months, and all after that including the school sections, \$2.50 as provided in the Burke Bill. A clause could be inserted as your request providing for the sale at public auction to the highest bidder of all lands remaining unentered at the end of four years from the date of opening. I submit this for your consideration. \$5.50 per acre for the first three months, \$4.00 per acre for the next three months and \$2.50 per acre for the school lands and all entered after six months from date of opening. This would grade the price regularly, dropping \$1.50 each time, from \$5.50 to \$4.00 and from \$4.00 to \$2.50, being \$1.50 each drop, to equalize the value of the selections.

Do I understand you, my friends, that you want this million dollar permanent fund to be provided for from the first money received from the sale of your Tripp County lands, that is, as soon as the amount received reaches one million dollars do you want that placed in the Treasury as a permanent fund to draw 5% interest?

VOICES: Yes.

INSPECTOR MCLAUGHLIN: The interest money would become due annually and could be paid out per capita, but what disposition do you want made of the remainder of the proceeds from the sale [45] of that land

after this million dollars is deposited. This is to be considered and I wish to explain my views. I understand from the memorandum which you handed me that you desire to make application for this from time to time through your agent. That is, after the million dollars has been set apart. This money will be coming in and placed to your credit from the time the first entries are made up until the last acre of the land is disposed of and proceeds paid in. Your agent and myself believe that three million dollars at least will be realized from your Tripp County lands at the prices provided by the Burke Bill, one million dollars of which will be drawing interest and the money coming in from time to time will be available for such disposition as you may make provision for.

HOLLOW HORN BEAR: How many years will the annual payment be, apart from this million dollars?

INSPECTOR MCLAUGHLIN: That is something we cannot calculate upon, as the money will keep coming in until the lands are all sold, but I should judge that by putting a clause in the agreement that the land remaining unentered at the end of four years from the date of opening shall be sold at public auction, that at the end of 8 years from the opening the money will be paid in. It is impossible to state definitely how long that would be, as there are so many changes liable to occur, but every change by relinquishment that is made, you people would be gainers. I should judge that the time would be from 8 to 10 years before all collections were made.

Regarding the permanent fund referred to, there might be a provision inserted by which ten percent of it might be drawn upon by a majority of the Indians petitioning for it under certain conditions and ten percent of \$1,000,000.00 would be \$100,000.00, which amount should not be exceeded in any one year. I wish to further say that it is a question whether or not 5% interest would

be allowed on such a permanent fund. The last two agreements that [46] I made with Indians providing for an interest-bearing fund, 4% only was allowed. However, I will submit your request as to the interest on that permanent fund with the hope that it may be allowed.

Article 8. You demand that the Government pay \$4 per acre for all land taken for school purposes. My friends, that is one clause that I think you should change to \$2.50 per acre, for the reason that, as I explained to you in our former councils, this is for the common schools of the state of South Dakota and whilst you old men may not need it during your lifetime, your children and grand children will be benefited by it. It provides for free district schools and it is our magnificent system of public schools which makes the American people a great people, and when your young men and women of the coming generations take the stand alongside of the whites, they will derive these benefits just the same as the whites. The question of price for these school lands, only section 16 and 36 in each township, amounts to very little comparatively, and your concurrence in this will show your good will and when taken in connection with that which you are to receive for the lands to be homesteaded, you will get a good average price for the entire cession.

Articles 9 & 10, providing for allotments to your children born since Mar. 3, 1899 up until this agreement is ratified, and the privilege to those of you who have sandy or otherwise worthless allotments to take other lands in lieu of them on any portion of the reservation, including Tripp County, can be incorporated in the agreement.

The 11th item is, that you want the Lower Brule agreement to be carried out, that all children when they become 18 years of age receive wagon, horses, etc., and

that your wives receive same. This, like those two sections, 5 & 6, which I spoke of, are not pertinent to the question before you. My friends, I have explained that matter to you on numerous occasions during our former [47] negotiations, and I have again explained it to you during these negotiations. I will leave it in your memorandum simply that attention to it may thus be called. The same applies to section 12, wherein you ask consideration and action in all cases where heirs are seeking to obtain the portion of land that would have been allotted to deceased parents and relatives had they lived. You can undoubtedly get a ruling of the Department as to this, but I could not include it in an agreement.

Section 13. This is a very good suggestion and I am glad to have you submit it, but it cannot be inserted into the agreement. That instead of working on the roads, etc., you want it brought about that the greater portion of the \$1.25 per day labor shall go toward improving your allotments and the benefit of same be put into your allotments according to the treaty of 1876, the so-called Black Hills Treaty.

My friends, one thing that I think of very great importance you have overlooked entirely, and that is the consideration of the question of additional stock cattle. With the exceptions which I have mentioned, there is nothing very unreasonable in the proposition you submit, but the sections irrelevant to the question should be eliminated. If you have anything further to say, I am ready to hear it.

HOLLOW HORN BEAR: We have mentioned what we want in that paper and we have nothing covered up. I know what we want. We want to apply for what we want through our agent. We might ask for material for houses, we might ask for teams and then again we might ask for cattle, but we want to ask for what we want through our

agent. There is something now that may kind of put you into a tight place and I ought to have asked you about it yesterday, but I did not. We want to put this million dollars in a permanent fund for ten years. Of course the interest on that will come to us yearly, but I want to know what the proceeds of this land will be, how much there [48] will be besides this million dollars.

INSPECTOR MCLAUGHLIN: I answered that already and stated that it would be impossible to tell until the land is all disposed of. There is one thing sure, you will get the full price provided by the Act. All the land will be disposed of and every cent collected deposited to your credit, but it is absolutely impossible to calculate with any degree of accuracy what the amount will be until the land is all disposed of.

HOLLOW HORN BEAR: The interest on this million dollars that will be paid to us, how much will each person get each year.

INSPECTOR MCLAUGHLIN: \$50,000 interest annually would give you about \$10 per capita.

HOLLOW HORN BEAR: If we get the interest money and get the other proceeds of the land outside of this million dollars, the Indians may ask for cash. Of course we will want to buy property and such articles as we may need, that is, by petition through our Agent. My friend, I call upon you as a brother and of course you put down what we say and take it home with you and help us as a brother. Some of the agreements in the past which we made have not come up to our expectations, so we have included them in this paper which we handed you.

INSPECTOR MCLAUGHLIN: We will now adjourned until after dinner and during adjournment I wish you would have the changes made in your proposition which I have suggested, making no change in the body of it, but have it clearly convey just what you desire.

STRANGER HORSE: in our council last night we put these articles down just as they came and supposed that we were putting them down right. Therefore fix it up now and adjourn the council.

[49] INSPECTOR MCLAUGHLIN: It should be rewritten.

(Council adjourned at 12 o'clock, M., until 1 o'clock P.M.)

Council reconvened at 2 o'clock, P.M.)

INSPECTOR MCLAUGHLIN: My friends, I have read your memorandum very carefully, have read it over and over and studied its provisions, and am glad to know that we are coming nearer an understanding. To begin with, and to place myself on record so that there will be no misunderstanding between us, I wish to say that if I cannot succeed in getting \$6.00 per acre for the first three months entries, I feel that you ought to authorize me to compromise by splitting the difference. That would be \$5.50 an acre for the first three months. For the second selection it would be useless to have the amount exceed \$4 per acre. I am confident that this would be all that would be acceptable to the Department or Congress and it would be giving you a good price for the reason that all the desirable tracts would be taken at the first price. After six months, when the third selection comes in, together with the school sections, to be \$2.50 per acre as provided in the Burke Bill. Your request that all lands remaining untaken at the expiration of four years shall be sold at public auction to the highest bidder is not unreasonable and I believe that it can be adopted.

Your third article in relation to setting apart a permanent fund, I will submit as it is, and I am in hopes that it will be favorably considered by the Department. Your fourth item that the remainder of the proceeds after the million dollar permanent fund has been de-

posited, shall be expended for your benefit upon application by a majority petition through your agent upon your stating what use you desire to make of this money and the agent to recommend same or not, just as he sees fit. That is not an unusual request and I will submit it.

The seventh article, in relation to the payment of the [50] minors' shares to the parents for the Gregory County lands, I will submit to the Department and request instructions regarding it.

Your eighth article here is in relation to those school sections which I have already explained, but will further state that if I were one of your people with my family and all my relatives here, I would feel that \$2.50 per acre was ample for the school lands and I would not think of asking any more for them. As I have heretofore frequently states, your articles 9 & 10 are quite acceptable. Both refer to allotments which will be made before the lands are opened to settlement. Your 1st, 2nd, 3rd, 4th, 7th, 8th, 9th & 10th articles are the essential parts of the agreement, and form a basis upon which an agreement may be formulated. The 5th, 6th, 11th, 12th and 13th of your articles cannot become any part of the agreement but may remain in the memorandum for consideration by the Department. The 5th is where you ask payment for those calves which you claim to have lost by not receiving your cows as early as promised. The 6th is that you receive the shares of deceased beneficiaries without being obliged to go to the expense of a long trip to Oacoma and probate the estates. The 11th is the matter of what you call the Lower Brule treaty. Your contention as to that is not based upon any provision of your agreement for the admission of the White River Brules, but it was stated by both myself and your Agent at the time, Doctor McChesney, in council while negotiating that agreement with you. I have explained that so many times to you

people that you should now understand it, but let it remain in your paper to call attention to your contention again. This 12th article whereby you ask consideration where heirs are seeking to obtain the portion of land that would have been allotted to deceased parents and relatives had they lived. That is a question of law as well as of Department decision and that is something of course that I could not include in the agreement, but it is here for them to see. I would like to have a Department ruling upon that and the Indians of the Sioux reservations notified so that they might [51] know the decision and not worry further over it.

In regard to working on the roads, referred to in your article 13, that the greater portion of the \$1.25 per day labor be expended in improving your allotments according to your treaty of 1876, the so-called Black Hills treaty, and that is something which I would very much like to see adopted myself. But these sections of your memorandum which I have spoken to you about, viz, 5, 6, 11, 12 & 13, cannot be incorporated in the agreement, but they will go forward to the Secretary and Commissioner as you have handed them to me. As I told you the other day, my friends, a compromise means a concession by both parties to a transaction, and a concession by the Government, as requested in your article 7, would be quite a concession should the Department consent to the payment of minors' shares to the parents of the children. Under the circumstances, I am going to recommend that for your Gregory County cession, but cannot promise that it will be incorporated in the agreement. I will do the best I can and am in hopes that when I explain the matter to the Secretary and Commissioner they will accept it. I regard it unadvisable to draw up any agreement or try to obtain signatures to it at this time, believing that it is necessary for me to proceed to Washington and lay this

whole matter before the officials of the Department and explain it fully to them as I now understand it, before urging you further in the premises. It would be nonsensical for me to make a trip to Washington without some definite proposition from you people, and this is why I insisted upon you people getting together last night.

My friends, I want you to remember what I have said in our former councils, that the Department is very desirous that you people be a party to an agreement which will provide for the opening of your Tripp County lands. The Secretary and Commissioner do not wish to have the lands opened up by Congress without your concurrence. We have practically agreed upon everything excepting [52] one thing. That is the price of the land and I wish to put the question to you very clearly so that we may understand each other fully as to that. I am going to submit this just as it is and if the Department accepts it, I will be very glad indeed, as it would then be recommended to Congress. If not acceptable, and I find that the Department officials are opposed to it, may I say that you will accept \$6 an acre for the first three months and for the other periods mentioned in the Burke Bill, as provided in said Bill? Your agent has just been figuring what your Tripp county lands would probably bring at these prices and both of us went over the figures together and at those prices your lands when all sold and everything brought in, will come very close to \$4,000,000.00 at the prices I have stated. If, after this is submitted to the officials of the Department and an agreement is prepared along those lines to meet your wishes, I would undoubtedly be sent back here to obtain the signatures of the Indians and I would not wish to return here with something that would not be accepted by you. Your demands in every respect as written out in that paper with the exception of price are not unreasona-

ble but the price is something I know will be the stumbling block at Washington unless you leave it at \$6.00, \$4.00 and \$2.50, and whilst I would do the very best I could to have the \$6 remain in the agreement, still, as I have said before, that may be rejected too and we might have to compromise and consent to splitting the difference, between \$5.00 per acre and \$6.00 per acre, by getting \$5.50 per acre for the first three months. I would now like to hear from you in relation to this proposal. I regard this, on the whole, an excellent price. Some of you have stated to me that the average price of inherited lands sold in Tripp County the past summer is \$6.75 per acre. You must bear in mind that those were choice pieces and many of the Tripp County pieces offered for sale were not bid upon. The Agent says that there is much of this land that was not sold because the heirs would not accept the bids for the reason that they [53] were not as high as others on adjacent land that was sold. The Burke Bill provides for the sale of every foot of the land and you ought to bear that in mind. Everything will be disposed of.

HOLLOW HORN BEAR: I am going to say this. Whenever I make up my mind to do anything and say anything I ask very strong for it. While I have no power when I want anything, I always try to work and do the best I can. It reminds me of when I was young. I used to be in fights and battles and I never depended on anybody but myself. Whenever I meet with a thing of this kind I always take it into consideration and try and consider it the best I know how. You must bear this in mind. The people of this reservation are not protecting you in naming a low price, but expect me to speak their minds. I think that you ought to say that you want to save money for the Great Father, that is why you ask us to accept \$2.50. For that reason you should say, let us put this at

\$5.50. Let it stand there, and I should have thought you would have said this instead of putting it at \$4. Make it \$4.50. In that way you would be saving a dollar for them. I am alluding to the school lands about which we have mentioned before. You take one off there and split it in two and divide the difference. It seems to me that you have this subject before you and you should put this paper before Congress, you want me to kill myself talking before it goes out of here. You can see yourself that in your proposition there is some parts that you have forgotten to bring with you. Those men who have sent you here are smart men, they are wise men, and they have sent you here with an article that has no point to it. Therefore we have to make our own agreements here. My friend, this is the last I am going to say. I have two horses here that have not had anything to eat for four days and this will be the last you will hear, me say. If it was in the summer time I would try and keep courage and stay here. I am on the point now where I am liable to slip away and leave you and when I do that, you will [54] not see anybody else here. The men that came here with me are most all gone now. A great many young men are depending on me and that is why I have kept courage and stayed here as long as I have. This is all I have to say. If you have anything further to say you can say it, then I am going home.

INSPECTOR MCLAUGHLIN: Do I understand my friend Hollow Horn Bear, that the figures which he demands are \$5.50, \$4.50 and \$1.50? Is that how I understand him?

HOLLOW HORN BEAR: That is the way I want it done.

INSPECTOR MCLAUGHLIN: Is that the wishes of each and all of you?

VOICES: No.

INSPECTOR MCLAUGHLIN: I would like to call for a vote on that. All who are in favor of that signify the same by raising their right hand. (Nobody moves)

My friends, I wish to state to you that in case I go to Washington at this time, I go on my own responsibility, without any orders to go in. I may therefore be reprimanded, but I feel that the importance of this case justifies my going, and I hope to be able to satisfy the Secretary that a personal conference was necessary to present this matter just as it is and as you people feel regarding it, and in such a way as I could not possibly do by correspondence. I would not be justified in making such a trip unless I could take something with me that the Department would be likely to concur in and Congress ratify. It is my desire for you to have a voice in concluding this agreement that makes me so anxious and urgent in this matter.

In order to ascertain the sentiment of the council, all in favor of the change in the price as stated by Hollow Horn Bear, will manifest it by raising the right hand.

All present raised the right hand with the exception of five and when the negative vote was called for only two voted No.

INSPECTOR MCLAUGHLIN: My firends, I accept this vote [55] as your decision and I will present this just as I have stated to you and shall do the very best I can for you. I wish to express my appreciation of the nice, courteous treatment I have received here from you people and the orderly manner in which our councils have been conducted. In closing our council and bringing it to a close for the present, it is simply adjourned until such time as I return, in closing the Council I wish to say that I shake hands with each and every one of you and with your respective families, and I wish you each and all a Merry Xmas and a Happy New Year, and that your

Tripp County lands may bring you \$4,000,000.00 at least. In closing I desire to say that I believe that you are in the hands of a good agent who is looking after your welfare and best interests, and when in doubt over anything do not fail to call upon him for advnce and follow it.

(Council adjourned at 4 o'clock, P.M., Thursday, the 20th)

I hereby certify that the foregoing fifty-five typewritten pages is a correct transcription of shorthand notes taken by me of Councils held by James McLaughlin, U.S. Indian Inspector, with the Indians of the Rosebud Reservation, So. Dak., from December 14th to 20th, 1906, inclusive

/s/ Thomas F. Murphy
Assistant Clerk.

Rosebud Agency, S.D.)
December 21st, 1906.)

[1] Council in regard to opening the surplus and unallotted lands of Tripp County, S.D., which adjourned December 20, 1906, reconvened January 17th, 1907 at 1 o'clock P.M., with about 100 Indians in attendance.

Louis Bordeaux, Interpreter.

AGENT KELLEY: We have called you together to consider this matter further with Inspector McLaughlin who has been to Washington and held conferences with the authorities and is now ready to make the matter plain to you.

INSPECTOR MCLAUGHLIN: My friends, I am pleased to meet you again. This is the beginning of a new year and I wish you all a very happy and prosperous year. We have reassembled after an adjournment of three

weeks. Three weeks ago today we held our last council. I am glad to see such a large representative gathering here, which considering the condition of the roads and the inclemency of the weather, is very pleasing to me. I visited Washington as I stated to you in our last council that I would and had three conferences with the Commissioner of Indian Affairs in relation to our negotiations. I would have returned a few days earlier but the day after my arrival in Washington I was served with a notice to appear before the Department of Justice in a case which involved certain questions in which the Colville Indians of the State of Washington were interested and was before the court of claims as a witness in the case which delayed my returning as soon as I otherwise would. I am prepared to make clear to you the different questions which you submitted before I left, on my recent visit. This is the paper which you submitted to me on the 20th day of last month and my replies to the several demands it contained appear on pages 43 to 55 of the minutes of our council, a copy of which minutes is filed with your agent. To begin where we left off at the close of our last council on December 20th, I will state that I handed your memorandum proposition to the Indian Commissioner which he took home with him so that he might read it with care, and he concurred in my explanation of the various phases discussed by us and my answers to the different questions submitted by you people. The Commissioner was very earnest in his expressions and directed me to convey to you people his great desire to protect your interests and obtain for you the very best conditions and price possible for your lands: that [2] he would do everything in his power to meet your wishes in placing the matter before the committees of Congress, but that after going as far as was reasonable he could not go beyond it, and that in case

you were not willing to meet existing conditions in a reasonable way he would at least feel that he had done his duty in striving to promote your welfare. He was very pleased and commended the judgment of you people very highly in your desire to provide for an interest bearing fund of one million dollars and said that while 5% interest was a very high rate of interest on such a deposit, more than has been allowed on similar deposits for some time past, he would do everything he could toward having it accepted, and Congressman Burke, who is the author of the House Bill for opening Tripp County, and a member of the committee on Indian Affairs, also said that he would do everything in his power to meet your wishes in this respect. The allotments for all of your children who have been born since allotments were completed will be provided for as you already understand, and will be made part of any agreement that we may conclude, and Indians who have undesirable allotments will be permitted to relinquish them and take other allotments in lieu thereof on any unoccupied lands of the reservation including Tripp County. It now seems that the only question to be considered by you people to enable us to reach an agreement is that of the payment to parents the shares of their minor children. The Commissioner would not concede your contentions to that question. He said that the minutes of our councils showed that I had answered this question very fully and met his views exactly, which explanation I will now read from pages 19 to 21 of our council minutes, as there are many here today who were not present at that meeting.

(Inspector reads minutes of council of Dec. 15th commencing with the second paragraph page 19 to and including second paragraph page 21)

The Commissioner stated to me that it was not only in the interests of you people but for the good of all Indians

of the United States that this method of caring for the shares of minors should be adhered to, and from his remarks I am confident that he will gladly continue increasing the so-called Roll of Honor, which I have heretofore explained, until many more, if not all of the [3] Indians of the Rosebud Reservation are included in it. From the trust reposed in him in this respect and the proper accounting of the estates of Indians which is expected of him, he feels that he must protect the Indian minors until he has reasonable assurance that the money which rightfully belongs to them will be well expended. In this connection he called my attention to a paragraph of the Indian appropriation Act for the present fiscal year which became law on the 21st day of last June, which I will now read to you.

(Inspector reads paragraph on page 3, Public 258, approved June 21, 1906, Indian Appropriation Act for the Fiscal year 1907, providing for the shares of minors retained in the Treasury to draw 3% interest)

In order that there might be no misunderstanding about this, I asked the Commissioner "Will the interest on the respective shares deposited be available for payment to the parent annually until they are 18 years of age?" That deposit belongs to the child and is paid to them when they arrive at 18 years of age, but the interest on the deposits is available annually and may be paid to the parents of the minors. You should understand the difference between the principal fund and the interest on that fund. The principal fund under the rulings of the Department belongs to the minor and should be retained for him, except when paid on the Roll of Honor, but the interest that is due annually is available and may be paid to the parents of the minor children until the minor reaches the proper age and then the entire amount is paid to the claimant and for which they receipt. My friends,

the Commissioner is very earnest in his desire to protect the interests of you people and the welfare of your children, and that is why he is so determined upon carrying out this regulation of the Department. I showed him the slip of paper, the extract from the minutes of our council in 1901, which was handed me when I was in council with you here last month, wherein I had stated during our Gregory County negotiations that a certain amount of money would be paid to every man, woman and child. In handing said paper to him, I explained that the withholding of the shares of minors had been adopted by the Department since the negotiations with you people in 1901, and that you contended for the [4] right as parents to receive the minor shares for your Gregory County lands on account of it having been the rule which had existed from time immemorial in dealing with Indians up to that time. The Commissioner answered that by saying that a wrong which had been practiced for many years did not justify continuing that wrong; that better methods should be adopted, and that is why this system of providing for the minors until they reach the proper age has been adopted and that property which rightfully belongs to them is now being safeguarded by the Department.

In regard to the \$4.00 per acre which you ask for your school lands, both the Commissioner and Mr. Burke told me that such price would be out of the question; that it would be considered as unreasonable when it reached Congress, and that \$2.50 is the highest price that has ever been allowed by Congress on any Indian reservation school lands. Both the Commissioner and Mr. Burke felt quite hopeful that \$2.50 per acre for the school lands would be allowed, but anything over that price would make the proposition prohibitive and would not be entertained by Congress. Mr Burke called attention to the

fact that the Indians of neary every other reservation in the country are receiving only \$1.25 for their school sections, that is what is known as the minimum price for Government lands, but here you people are getting \$2.50 per acre for the school sections that is, two sections in each township. Your Agent made a suggestion to me when I was here a few weeks ago which I submitted to the Commissioner which he was very much pleased with. It was in relation to school sections which might be allotted or partly allotted to Indians. Any of the school sections which had been allotted to Indians in Gregory County, the State had the right to select any other lands in the township, which gave them the right to select the best land in the township. Your Agent suggested that as sections 16 and 36 in each township are school sections, if either of these sections or any portion of them should be allotted, then another section of similar character and equal value be selected in [5] lieu of them and not allow the State authorities to select the very best land. This would save that proportion of your more desirable lands for the higher price, coming under the first entry, and should we enter into an agreement as to the other provisions, we will incorporate a provision covering that feature very clearly. I do not think of anything further of importance to say at present as we have gone over the other features so often. You all remember the closing of our last council when you submitted this paper asking \$6.00, \$5.00 and \$4.00 per acre, respectively, for the different classes of the land, over which we had considerable discussion at the time, and I suggested splitting the difference between the \$5.00 per acre provided in the Burke Bill and the \$6.00 which you asked, and to call it \$5.50 per acre for the first class entry, \$4.50 per acre for the second class entry, and all after that including the School Sections to remain at \$2.50 per acre, because I

was as satisfied when talking to you at that time as I am now after talking with my superiors, that no greater price would be allowed. You must consider, my friends, that there is comparatively little land in these school sections when considered in aggregate, and under the circumstances you should be willing to accept \$2.50 per acre for the School Sections. As I stated to you before that both the Commissioner and Mr. Burke, who are determined to do the very best they can in protecting your interests, feel that the \$2.50 per acre for your school lands is all that can be reasonably demanded, and that it would be futile to urge for a higher price. There is now very little difference between us. I am ready to incorporate the depositing a million dollars at 5% interest and the petitioning to the Department through your Agent as to what disposition in the way of purchases you may wish to make from the remaining proceeds as received. As to reallocoting those who have poor allotments and to children who have no allotments, that will be made a part of the agreement.

As to the written statement of requests which you handed me [6] at our last meeting, I explained at the time that certain of its sections which I indicated by pencil check marks, were irrelevant and not pertinent to the question before you, but I submitted the paper to the Commissioner for consideration. I stated to you when you handed me that paper that your 1st, 2nd, 3rd, 4th, 7th, 8th, 9th & 10th articles would be considered, but that the 5th, 6th, 11th, 12th & 13th had no bearing upon the question, but that I would submit them for consideration of the Department Officials, and in reply to the 13th I wish to read a letter written to your former Agent (McChesney) a short time before he left here.

(Reads letter to U.S. Indian Agent dated Nov. 9, 1905, in regard to work on roads, reservoirs, allotments, etc., in lieu of issue of rations)

This is a question of considerable magnitude and the changing from a fixed policy to a new process is necessarily slow, and I therefore wish to say in conclusion that you may feel easy in your minds that the Commissioner is thinking of you constantly and doing everything in his power to best promote your welfare. I have known many Indian Commissioners, have served under eleven filling that office, and none have worked more earnestly for the Indians than the present Commissioner is doing. My friends, I think the only question now to be disposed of is that of the shares of the minor children being retained in the Treasury until they are 18 years of age. You know that there are a number of you already drawing those shares, those on the so-called Roll of Honor, and each of you have an opportunity of being thus enrolled. Furthermore, the shares of these children returned to the Treasury are drawing interest at 3%, and that interest can be paid annually to the parents of the children until the child arrives at 18 years of age.

My friends, I have now explained all additional that I have learned in reference to this matter since I left here three weeks ago, and you may want to consider the question among yourselves before talking to me further in relation to it, but if any of you wish to [7] ask me any questions, I am ready to answer you as I now understand them, and will answer truthfully and clearly so that you cannot fail to fully understand the whole situation. My friends, you have an opportunity to become a party to this agreement for opening your Tripp County lands and of securing an agreement that is much more generous than the Burke Bill, but it will be along the lines of said Bill. If you do not feel like accepting the reasonable proposition now before you, I fully believe that the Burke Bill will become a law. Many people are desirous of having you accept the proposition, who feel that if you

do not consent, the Burke Bill will be passed by Congress and I know of my personal knowledge that there is no one more anxious and desirous of having your full concurrence than Mr. Burke himself. I had two conferences with Mr. Burke. The day before I left Washington I was nearly two hours with him in his office, discussing this matter, and am convinced that he will concede much in order to have you people satisfied. Remember, he is only one man of a great many members, but he is a very popular man of the Committee on Indian Affairs, and when he makes statements and urges a recommendation he is very apt to be listened to.

I simply mention these facts, my friends, so that you may not lose sight of them when considering the matter and I assure you that the Secretary, Commissioner, and Mr. Burke, the latter being the author of this Bill, will do everything in their power to meet your wishes in placing this matter before Congress in your interests, if you are not unreasonable in your demands. I am now ready to listen to you and to abide by any decision you may make to discuss the matter further this evening or adjourn until morning.

HOLLOW HORN BEAR: In the Gregory County Treaty, the minor children's money is being retained in the United States Treasury at 3% interest. Will the money be handled the same way in this treaty or the agreement we now make?

INSPECTOR MCLAUGHLIN: Yes. There is no doubt of that.

HOLLOW HORN BEAR: There is another question I want to ask you. [8] Suppose that Bill passes. Our Agent has the power to recommend that anyone shall get his minor children's money and if the Agent recommends, can he get it?

INSPECTOR McLAUGHLIN: That power is vested in the Secretary which he delegates to his subordinates. Where the Commissioner of Indian Affairs is satisfied that the parents are proper persons to receive the minor children's shares, he can do it.

HOLLOW HORN BEAR: There are some families who draw their money, and the Agent has to ask for money for their minor children for the others, and since this law allowing 3% interest can they still get their children's money?

INSPECTOR MCLAUGHLIN: Yes. I will endeavor to make this plain to you.

(Reads item relative to interest on minors' shares in Indian Appropriation Act, Approved June 21, 1906)

HOLLOW HORN BEAR: I understood that this law was passed since some of the minor children's money was returned.

INSPECTOR MCLAUGHLIN: Yes, but the Act covers all whose shares have been or shall hereafter be withheld from the parents.

HOLLOW HORN BEAR: That is all. Let this council be adjourned and we will have a council of our own and meet you tomorrow. We have come with our wives and we have to spend money. The Agent ought to give us some beef and hard tack.

INSPECTOR MCLAUGHLIN: Your agent and I recognized this fact yesterday, and I telegraphed to the Secretary asking that your Agent be authorized to subsist you people while in council. The requested authority has not yet been received, but I will ask your Agent to assume the responsibility until the answer comes, and will stand by him in this and know that he will not be censured for furnishing you necessary subsistence at this time.

TWO STRIKE: My friend, you know we have sold land in the past, as I told you when you were here before, and you know this payment should be for five years. You said it would be 5 years and there is three years left. [9] I want you to pay that first and square it up. You done that for us and if you mention this to the authorities it will be all right. Do you want us to throw away what we sold? I want you to fulfill that Gregory County treaty first. If you fulfill that treaty first there will be no harm in you talking for more land. That is all I have to say to you.

INSPECTOR MCLAUGHLIN: In reply to my friend Two Strike, I wish you people to understand that you are receiving payment for your Gregory County lands just as provided in the Act of Congress. You have at least three years more of the larger payments, and there will be money coming in from that for some time longer as there is land yet to be disposed of in Gregory County. Your agent has just told me that the Gregory County papers state that there are fillings being made there very week yet. Your Gregory County payments will be coming in regularly until that is paid up, and if we make an agreement for your Tripp County land it will be another transaction entirely, a different agreement, and the money coming in from that will have no direct connection with your Gregory County moneys. They will be two different agreements.

RED FISH: I want to put my hand before this proposed cession. We did not get anything from the Crook treaty. We are starving now. I want whatever money is coming to us from the Crook Treaty. I want you to give it to us in our hats. Of course, they have taken the Children's money and put it away. That will be hard on us. We will be starving if we do not get that money. I say that I put my hand in front of this. I have

over 190 men who will be opposed to it. Whenever a thing like that comes up I want to look and consider the matter over, but this time I will not. I am going home.

INSPECTOR MCLAUGHLIN: I wish to say in reply to my friend Red Fish that I feel as though some of you are under the impression that the money which is being retained in the Treasury is lost to you. On the contrary, I wish you to understand very distinctly that this money is being held for your children, and not only that but an [10] interest is being paid on it. As the children reach the age of 18 years, the agent helps them to get it and he just now tells me that he has already gotten over 100 shares for those who have reached their 18th year. Another means, apart from waiting until the minors reach 18 years of age, is the Roll of Honor which the Commissioner explained to me and which I have explained to you people. That door is open to each and every one of you and I know it is the Commissioner's desire to increase that Roll just as rapidly as justifiable. My friends, I do not wish you to leave the Agency, as I want you to carefully consider this matter. The Agent has told me that he is going to provide you with subsistence, and this being a season when you cannot do much at home, you might take a few days here and discuss this matter among yourselves and any question that you do not fully understand, call for me and I will come to your councils and explain them. I am here on this business only.

HIGH PIPE: Whenever the people give me power to talk, then I talk to a wise man, and if they did not give me that power I would not say anything. There was twelve men that have powers given to them by the people to talk for them, but I came in here to see you and pay my respects. I live across the White River and am going home.

HOLLOW HORN BEAR: What HIGH PIPE says is not so. They had a council and I was one of those, but what he says about speakers appointed is not so and this council should be open for everybody.

INSPECTOR MCLAUGHLIN: That is right. Every person has a right to express himself.

HOLLOW HORN BEAR: Every man has his own knowledge and therefore he can think and he can talk. I would like to get an order for the rations so that we may take it home and have a council and I have invited everybody to be there.

SHOOTING CAT: I have been listening to you and have tried to understand what you say. I am not going away from here. I understand about these minor children's money. Many have died. I have many little grandchildren who are crying for food. I understand that [11] the money is retained, but the children are crying for food. My friend, I have always touched the pen for you when you come here. Whenever the Gregory County treaty expires, at the end of five years, I will then touch the pen for you but not this time.

INSPECTOR MCLAUGHLIN: My friends, I believe that you all feel that I am your friend and that I will do everything in my power to promote your welfare, and I wish you to get together tonight. Your agent is ready to furnish the necessary rations to enable you to discuss the matter tonight so that you can meet me tomorrow. Should you wish to see me anytime tonight I will go before your council to answer any questions. I would like to have you here by 10 o'clock tomorrow morning as there will doubtless be some questions you may want to ask me, and in the meantime should any question come up that is puzzling to you, send for me and I will explain it.

We will now adjourn until 10 o'clock tomorrow morning.

(Council adjourned at 4 P.M. to meet again on Friday, the 18th)

Council reconvened at 11 o'clock, A.M., January 18th, Thomas Flood interpreting.)

INSPECTOR MCLAUGHLIN: My friends, I am ready to hear from you as to what you may have determined upon last night in your council.

HOLLOW HORN BEAR: When you read from a letter the people do not understand, but whatever you speak without reading from a paper, the people understand what you mean. I mention this for the reason that whatever point you want to go before the council we want you to say it plainly. We have taken into consideration the amount that we consider an acre of our land worth. We want one million dollars put in the Great Father's Treasury at 5% interest. We want that money to be drawing interest for ten years and the interest paid to us annually in cash. After the end of ten years we want the principal of that fund to be divided equally among us. We made this proposition to you and do I understand you right when you say that it would be taken into consideration in the Great Father's Council and would be made in that way?

[12] INSPECTOR MCLAUGHLIN: I have already said that I would incorporate that in the agreement, but as I stated to you yesterday, the Commissioner said that 5% interest was a higher rate than has been paid for some time past on a fund of that kind, but that he would favor it, and Mr. Burke promised the same.

HOLLOW HORN BEAR: The reason why we ask this rate of interest is that we take it from the Three Stars Treaty. (Act of March 2, 1889) That money drew 5% interest. The reason we ask this is because it has been

done before, and we ask it for this. If anyone in need wanted any part of his share out of the principal, could he get it through the Indian Agent? Could he draw any portion of his share?

INSPECTOR MCLAUGHLIN: Not if it is placed as an interest bearing fund for a certain period of ten years, but the agreement will provide that all proceeds of the land over the million dollar deposit shall be expended upon a petition of a majority of the Indians, through the Agent and endorsed by him, stating what disposition you desire to make of it. Your agent and myself have figured very conservatively and we conclude that the surplus lands in Tripp County will bring about \$3,000,000. The million dollar interest bearing fund will be only about 1/3 of it. The balance of the money will be coming in from time to time, the same as from your Gregory County lands, and all over the million dollar fund will be subject to petition by you people through your agent, in the discretion of the Secretary of the Interior. Congressman Burke feels quite confident that the land will bring in the neighborhood of \$4,000,000, but that will depend upon the number of allotments taken within the ceded tract. There may be three or four hundred allotments taken out there. I estimate that there will be 700,000 acres to be disposed of under this agreement.

HOLLOW HORN BEAR: We had our talk last night and I mentioned what it would amount to and you have now answered that. We decided that we want our people to take allotments, all those who are entitled to [13] them, before the land is thrown open.

INSPECTOR MCLAUGHLIN: That is distinctly understood and will be provided for. The Bill provides for that, but our agreement will stipulate that allotments are to be completed before the tract is opened to settlement.

HOLLOW HORN BEAR: We also said that some people who have not drawn their Gregory County money have died and we asked for that money to be gotten through the Indian Agent. We do not want to go before the Probate Court at Oacoma, we want it done through our agent.

INSPECTOR MCLAUGHLIN: There is a provision already providing for that under consideration by the Commissioner. He already has that in view.

HOLLOW HORN BEAR: There is another thing which you have made us understand. That is about the labor. We understand too that there is a rule that our minor children will not be paid. We also mentioned about having lost calves here in the past year and you have made us understand that the contractor failing to furnish the cattle was the fault of that, but I have not made up my mind as to this. It is not going to settle my mind by you telling me that. I am going to follow that up in the future. This is all that I have to say. I am going to say a few words to my people here about something that was talked of last night, but first I want to ask you one question. You have told us that there will be one million acres of land. Suppose this bill goes through and our children and others entitled to allotments be allotted inside the tract, will that which is left be sold and no more land asked from us?

INSPECTOR MCLAUGHLIN: The acreage of Tripp County is a little over a million acres, 1,094,000 acres, about 138,000 acres of which has been allotted, leaving about 907,000 acres unallotted as it now stands. When the children, and those who desire to change their [14] allotments are allotted, should they select lands in Tripp County, it will reduce the acreage greatly. A specific number of acres will not be stipulated in the agreement, simply all lands that are left after the allotments are made, are to be disposed of, as provided in the Bill.

HOLLOW HORN BEAR: I tried to see the agent this morning and ask him how many people are entitled to allotments, but he was so busy I could not do so.

AGENT KELLEY: I think there is probably six or seven hundred.

HOLLOW HORN BEAR: You came here and presented the bill to us saying that you would give us \$5.00 per acre the first three months, \$4.00 per acre for the next three months and \$2.50 for the school lands and all after six months. In answer to that we told you that we wanted \$5.50 per acre for the first three months, \$4.50 per acre for the next three months, and that we would let the Great Father have the school lands at \$2.50, the school lands alone. The council we held last night, we decided to make an amendment to that. The council voted on it and I am now going to state it, and I am going to hold on to it. Where I said that I would accept \$5.50, they want \$6.00 for the first three months. The next three months they want \$4.50 and \$2.50 for the school lands that the Great Father is to pay for, just the school lands alone. This together with the other conditions which I have already mentioned, we want to become a law. First three months \$6.00. The next three months \$4.50.

INSPECTOR MCLAUGHLIN: In order to make the record clear, and I to understand that all after six months, including school lands, is to be \$2.50 per acre?

HOLLOW HORN BEAR: \$2.50 for the school lands and other land that will be left after the first six months. I want to tell you now that if it is your intention to reduce this price, I will never consent to it. I will always hold on to this price, and we want this to become a law and want these prices.

[15] INSPECTOR MCLAUGHLIN: I wish to have this made plain so that we may understand each other. Under

my instructions, which I explained to you last December, the price was as provided in Mr. Burke's Bill, which is \$5.00 per acre for all land taken in the first three months, \$4.00 per acre for all taken the following three months, and \$2.50 per acre for all taken after that, including the school lands, and all land not taken at the expiration of four years, to be sold to the highest bidder for cash. In the memorandum which you handed me on the 20th ultimo, you also request that all the land remaining untaken at the expiration of four years shall be sold at public auction to the highest bidder. You now demand an increase of \$1.00 an acre over the higher price that was provided in the Burke Bill and my written instructions, as instead of \$5.00 an acre you now demand \$6.00 per acre for all the land taken the first three months, and instead of \$4.00 per acre as provided in the Bill, you demand \$4.50 for all taken the next three months, and after six months, the price, including the school sections, as provided by the Burke Bill to remain. I now understand that \$6.00, \$4.50 and \$2.50 per acre, respectively, are the prices you demand.

HOLLOW HORN BEAR: Another thing that we want I forgot to mention, which is, that as long as there is any surplus land and there is a child born to us, we want it to be allotted. We want that to be included in our agreement and become a law.

INSPECTOR MCLAUGHLIN: I will include that in the agreement.

HOLLOW HORN BEAR: You also said that you were afraid that the Burke Bill would become a law if we did not consent to it.

INSPECTOR MCLAUGHLIN: I did.

HOLLOW HORN BEAR: I do not want that. I suppose the reason you say that is because in Oklahoma there was a tribe of Indians whose land was thrown open contrary

to their wishes. Those people wanted \$10 per acre for their land but the Government set a price of \$1.25 and opened it.

[16] INSPECTOR MCLAUGHLIN: That was the Kiowa and Comanche reservation.

HOLLOW HORN BEAR: Those same people hired a lawyer and took it to the Supreme Court and realized at the end \$20 an acre from it. I do not think that you can take this land away from us for nothing. I hope the Government will not try to scare us into anything, but will give us fair and honest consideration. That is all I have to say. It is always the best plan to be friendly and shake hands with one another.

LITTLE CROW: This morning I thought a short prayer to have a nice friendly talk this morning. Now I am before you. My friend, you are now trying to make a new treaty. Therefore, my friend, do not hurry us up but give us time to take this into consideration and look into it thoroughly. My friend, you can see for yourself that you are taking the eastern part of our reservation and there is hardly anybody in this council from there. The roads are bad and they cannot get here. My friend this is the way I feel about the land you are talking about now. Wait until it is warm weather and have the Great Father send a man out here or two men and have them go over that land and see what it is worth. Then, we can talk about it. I mention this because I am selected to represent my people from my district and I think I have a right to express my opinion in regard to this matter.

REUBEN QUICK BEAR: My friend, this is not the first time that we have met you, we have met you quite often. We are a tribe of Indians here. We have a guardian and he is the Great Father, and through him you are appointed to come here and look out for our best interests, and that is what you are here for, to see that we

get our due. For those reasons you came here with a Bill which is going to become a law, and explained it to us. What you have said to us we have talked about and taken it into consideration. Last night the man that mentioned those things was Louis Bordeaux, and [17] this is what he mentioned. He mentioned that for the first three months they want \$6 per acre. The next three months \$4.50, and he said for the school lands \$2.50. He never mentioned anything about any of the surplus land, but only the school land at \$2.50. Therefore, I say that we did not understand one another. For that reason, I want to mention to you what I think. What I want is this. We want the Great Father to pick one man and us pick one man and let those two men pick the third man and send them down in that country and look over every acre of it and see farm land and hay land and let us make an agreement accordingly. Let them appraise the land. If this was done that way it would be agreeable to our people here and we would know what we were getting. We Indians here have no teaching. We have no education. You white people are smart. You are wise people. You are educated and whenever you come up against anything like this which you think is worth more, you hire a lawyer and take it to the court and see. That is the only way that you can get justice, and that is the reason you do it that way. Treaties have been made in past years by not understanding one another at all, and after the treaties have been made the people then commence to think back and some of them scold themselves for signing or making any such agreement. I think it will be time enough whenever our land has been appraised and we know what it is going to be appraised at, and we can then enter into an agreement, and will put in those clauses which are presented to you. My friend, you are married to a mixed blood Indian woman. Your wife has Indian

blood in her, and you say you are friendly to us. You go back and tell the Great Father that we Indians want what our land is worth.

SORREL HORSE: I am in favor of Hollow Horn Bear's speech.

INSPECTOR MCLAUGHLIN: There have been two presentations of this matter which are at variance with each other. That of Hollow Horn Bear and that of Reuben Quick Bear, and I desire to answer them with a great deal of care, and I desire that each and everyone of [18] you pay close attention to what I say so that you may clearly understand me and will therefore take an hour's recess for dinner. We will not adjourn, simply take a recess. I will be back here at one o'clock and take up these two questions and answer them very fully.

(Take recess of one hour and meet at 1 o'clock, P.M.)

INSPECTOR MCLAUGHLIN: My friends, I will first say a few words in relation to my friend Hollow Horn Bear's remarks in his last speech. He spoke something in reference to the lands in Oklahoma that had been opened to settlement at \$1.25 per acre. To go into that fully and explain it so that it would be understood from the beginning to the end would take a very long time, as that is a matter that was undecided for several years. I will tell you in substance that it was a treaty made with the Kiowa and Comanche Indians in 1893, by which they were to receive, after allotments were made to the Indians, \$1.25 per acre for all surplus lands, that is, outside of their allotments. The treaty with those people was something similar to yours of 1868, requiring three-fourths of the Indians to sign in order to validate it, and there was less than half of them who had signed it. Congress did not act upon it until several years had elapsed. When they acted upon it they ratified the agreement just as made, notwithstanding the fact that it

did not contain the required number of signatures. The lands were allotted to the Indians and the surplus lands opened to settlement at \$1.25 per acre, excepting a pasture of 550,000 acres, which was reserved. The Indians were very much dissatisfied with the transaction and brought action in the courts which they carried to the Supreme Court of the United States, which brought about the decision known as the Lone Wolf Decision. They were ably assisted by friends of the Indians who bore the expense of having it carried to the Supreme Court, which is the court of last resort. The decision was, as I have heretofore explained to you, and which [19] I will repeat again, that the Indian is the ward of the Government, that the Government is the guardian and that the guardian has the right to do that which is deemed best for the ward; therefore, Congress may legislate for Indians without consulting them. But my friends, notwithstanding this, I have been sent here to confer with you in relation to your Tripp County lands for the purpose of trying to make an agreement that may meet your wishes, that the Department can aid in having ratified by Congress instead of having legislation enacted that would open your lands without your concurrence. I wish to say too that the Secretary of the Interior and Commissioner of Indian affairs are hopeful that we may make an agreement upon which the Department can stand in presenting the matter to Congress. If, after the Department officials feel that they have done their full duty and gone to the limit of all that they could, should the Indians refuse to accept a reasonable proposition, Congress would doubtless enact legislation to open the lands regardless of your wishes. I understood my friend Hollow Horn Bear to say that you people did not wish to be intimidated, frightened or forced into doing that which you did not wish to do. It is not my desire nor the

desire of the Commissioner of Indian Affairs, nor of the Secretary of the Interior, that such should be resorted to, and it is far from my intentions that any words that I have said to you or may say to you in our councils here should be construed as meaning intimidation or trying to force that which is distasteful to you. If, after I have placed the matter before you in as plain language as possible, and you still refuse, I will have done my duty, will make my report accordingly, and my work will have been accomplished under the instructions which I have received from the Department. I will now take up the questions raised by my friend Reuben Quick Bear, and try to explain them so that you can understand them.

Reuben suggests the appraising of your lands by three Commissioners. To begin with, that would mean a delay of a great [20] many months and the expense of three Commissioners, with the necessary assistants that they would require, would approximate from \$30.00 to \$50.00 per day. That is, there would be three Commissioners, their salaries are usually \$10.00 per day. They would have a surveyor, flagman, chairman and a couple of teams, for the reason that such appraisements are usually made in 40 acre tracts, and the appraisement of your Tripp County lands, after the allotments for your children had been made, would cost from \$6,000 to \$12,000. Senator Gamble introduced a Bill in the Senate a few days after Mr. Burke introduced his Bill in the House, providing for the opening of your Tripp County lands by appraisement, which provided \$1.25 per acre for your school lands. Both Bills were referred to the Department for report and a report was made upon both bills, but favoring the Burke Bill as best for you people. I have a copy of the Burke Bill which shows certain amendments recommended by the Indian Office, one of which makes it clearly impossible for any of the land

filed upon by an entryman, if abandoned before final proof is made, to cause any loss to you people, that should any entryman fail to complete his proof, the land reverts back to the Indians and the man filing upon it again must pay the same price that the original entryman did, and all that the first entryman may have paid in goes to you people. From my knowledge of the Indian lands sold by appraisement and of the plan proposed in the Burke Bill, I regard this system the better and believe that it will bring a much larger total than the appraised system would.

The system I submit provides for three different classes of land. The great rush will be for the first class at the higher price, the first three months. As I have explained to you heretofore, when your Gregory County lands were opened, more than three-fourths of the entire cession was taken at the \$4.00 per acre, which was the highest price.

There is no question in my mind, or in the mind of any [21] person who understands the conditions in this country, that, with the extensive advertising that your Gregory County opening brought about throughout the country, that the first ninety days will take all the desirable lands in your Tripp County lands, at the higher price. Under this system we are sure of quick, prompt sale, and prompt settlement on all of the lands under the first two prices, but under the plan of appraising your lands it would mean that nothing could be done in the way of appraisement until all of the allotments had first been made. The delay in making the appraisements and providing for the sale and everything connected with it, would necessarily delay the opening greatly, and Congress might not be disposed to await the delay. My friends, you should put that aside and consider the proposition which I have submitted to you. I feel that we have discussed this matter very fully during our councils last month, and

again yesterday and today, and I am now going to express myself very freely and plainly in the matter, I feel that I will have the Commissioner as well as the Secretary behind me in the report I submit, and also Mr. Burke, and I had Mr. Burke's assurance that he would do everything reasonable that he could to meet the wishes of you people, as he does not desire legislation enacted without your concurrence. It was put to a vote here on the 20th of last month and the prices \$5.50, \$4.50 and \$2.50 per acre, respectively, were carried, which I explained to the Commissioner and Mr. Burke, and whilst they both thought that price might be difficult to get Congress to accept, I inferred from their remarks that they would do their best in support of those figures. Feeling that my report in this matter will have considerable of a bearing upon its acceptance, and to meet your wishes, as presented here this morning by your speakers, I will assume the responsibility and consent to enter into an agreement with you for \$6.00 per acre for the first three months, \$4.50 per acre for the succeeding three [22] months, and \$2.50 per acre for the remainder, including the school lands, and all that remains unentered after four years, to be sold to the highest bidder for cash. This, together with the other conditions which we have talked of, and as requested by you, will be embodied in our agreement, which will provide for the ten year million dollar fund at 5% interest, the interest to be paid annually, which would be about \$10.00 per capita for ten years, and the principal to be distributed among you at the end of ten years. After the proceeds of the lands would reach the million dollar deposit, the rest of the money coming in from time to time would be subject to a majority petition of you people through your agent as to its disposition. It would also provide for reallocation to those of you who have undesirable allotments, which

may be taken anywhere on the reservation, including Tripp County, before it is opened. The agreement which I offer also provides for allotments of 160 acres each to all living children born since allotments were completed here, and furthermore, for allotments to all children hereafter born so long as you have any unallotted land remaining on your reservation. My friends, I have given this matter a great deal of study, have thought it over during the dinner hour, and have gone my limit as to price and terms, and it is now for you people to determine. If you accept the proposition which I have outlined, I can have the agreement ready for signatures by next Monday morning. If you reject my offer, it is unnecessary for me to remain here longer and I will wire the Department that you have refused the proposition and it will then doubtless be left to Congress to proceed in the matter as desired, in which event, Congress will very probably enact the Burke Bill as it was introduced, and from which, as I estimate it, will bring \$600,000 less than from my offer. The Burke Bill is but \$5 per acre for the first three months and \$4.00 for the next three months, instead of \$6.00 per acre and \$4.50 per acre respectively, as now offered you.

[23] REUBEN QUICK BEAR: My friend, when you first came here why did you not tell us the price you were going to give and push that price for us? My friend, you ought to have told us in the first place that you would give us \$6, \$4.50 and \$2.50 per acre, and \$2.50 per acre for school lands, and the remainder to be sold at the highest price at auction.

INSPECTOR McLAUGHLIN: I submitted the price suggested in my written instructions, namely, \$4, \$4, and \$2.50 per acre, respectively, and after my visit to Washington I was prepared to allow \$5.50, \$4.50 and \$2.50 per acre for the respective classes of the land. But

here in your councils you demand \$6, \$4.50 and \$2.50 per acre and I have assumed the responsibility of adding fifty cents per acre on the first choice lands to meet your demands. I do not know whether the Commissioner or Congress will accept it, but after explaining the situation to Mr. Burke, I was satisfied from his remarks that he would be willing to increase the price a little in order to have it satisfactory to you people. The Commissioner and Mr. Burke concurred in that \$5.50 & \$4.50 price and I have added 50¢ to the higher class lands, to meet your wishes and hope for its approval by a full statement of the facts. I was not neglectful of your interests during my recent visit to Washington.

REUBEN QUICK BEAR: As I said before, we Indians know nothing, have no learning at all, while you are a wise man, and if you are wise for the Indians you should have told this in the first place clearly to us.

INSPECTOR McLAUGHLIN: I do not like to be accused of not telling the truth. I told you just what my instructions were and I am surprised that you or any other person here should make that remark. I told you in our first council just what my instructions were. I left here for Washington without authority and ran the risk of being reprimanded, but received a telegram at Valentine which authorized the trip.

REUBEN QUICK BEAR: I did not mean what you told us when you [24] returned, I meant that you should have told us yesterday. One of our chiefs here, Hollow Horn Bear, said that the Indians have no understanding and ought to have no ill feeling against each other, and you ought to have told us the price this morning. This is what Hollow Horn Bear here has accused one man of. The interpreter, Louis Bordaues, mentioned the price last night exactly as you have said now, which was \$6.00, \$4.50 and \$2.50 for the school land, that was mentioned

last night. Hollow Horn Bear has said what they had done last night was \$6, \$4.50 and \$2.50 and so on, and the school lands \$2.50. That is what Hollow Horn Bear told you they had accomplished last night. Whatever they did last night was wrong, a misunderstanding, so I have told you that we make another proposition which is to appraise the land and take that off home with you. That is what I told you this forenoon. You said that the cost of appraisement will be about \$6,000 dollars. We are wards of the Government and the Government ought to stand that expense themselves, so that we do not have to pay for the appraisement ourselves.

INSPECTOR MCLAUGHLIN: Such expense always comes out of the sale of the lands appraised. I have a copy of the Gamble Bill here providing for the appraisement of your Tripp County lands and it provides \$1.25 per acre for the school sections, and the expense of everything connected with it to be paid from the proceeds of the lands.

REUBEN QUICK BEAR: Of course everything should be done right and anything connected with the appraising, the appraisers would have to call upon somebody to help them and the help ought to be paid by the appraisers. I will ask you a question and you will remember it. You were sent here by the Government to negotiate with the Rosebud Indians in regard to the Lower Brules, and you told us that the Secretary told you that our wives who received allotments should have payment the same as heads of families and that was promised to us by you. After you had accomplished this you went back to [25] Washington. The Secretary who made this promise left and another had taken his place and what you promised us was not done, therefore, they had you make a promise for nothing. Now, I ask another question. This \$6 and \$4.50 and \$2.50 you offer, can

you assure us that you will have that done when you go back? My friend, I want to know this as you heretofore made a similar promise as you have said now and the promise was not fulfilled. What I have mentioned in regard to the appraisement of land I will stand by, and there is money yet due to us from Gregory County. We know that there is \$200.00 due each and every one of us from the Gergory County money, therefore, we can depend upon that money, and let appraisement of land go on. This is what I want and I will stand by it.

INSPECTOR MCLAUGHLIN: I feel called upon to repeat again what I have stated to you people several times in the past, in explanation of what you call the Lower Brule treaty, which was for the admission of the Lower Brules to your reservation. When I was in Washington just before coming to your reservation to negotiate that agreement, the officers of the Indian Department suggested that I get the consent of you people and of the Lower Brules that the allotments be changed so that instead of the heads of families getting 640 acres, it should be divided, giving the husband one-half and the wife one-half, 320 acres each, that in case of separation the wife would not be left without any land. I then asked if when submitting that question could I tell the Indians that the wife would then receive the benefits of Section 17, the same as the Head of a Family or a single person over 18 years of age. A letter from Secretary Hoke Smith was shown to me and your Agent, Dr. McChesney, who was with me at the time, instructing the Commissioner of Indian Affairs as to the benefits to which Sioux allottees were entitled under Section 17 of the Act of March 2, 1889, having special reference to persons on the Crow Creek Reservation, and which stated in substance that each and every [26] Sioux allottee when they reached the age of 18 years should receive the

benefits of Section 17 of said act. Something over a year later I learned from Dr. McChesney that the rule had been changed by the Department and that only the Head of the Family and single persons over 18 years when allotments were ordered were entitled to said benefits. In the meantime, Secretary Hoke Smith had been succeeded by Secretary Bliss and the question having been submitted to him, the Department ruled upon it differently, which has since governed in the issue of said benefits. My friends, you have reason to feel disappointed over that, but you were no more disappointed than I was over it, or regret it more than I do. I was shown a letter regarding it, and made that statement to you in good faith, and every word that I stated to you at that time regarding that matter was corroborated by Dr. McChesney who was then your agent, who corroborated the statement which I made to you on that occasion.

The next question is, my friend Reuben Quick Bear's, asking that in case we enter into an agreement at \$6 for the first three months, \$4.50 for the next three months and \$2.50 per acre for all after that, including the school lands, if I am sure that it will become a law. In answer to that I will say that I believe it will, else I would not enter into it. But I cannot promise it, neither could the Secretary or Commissioner promise it. There is no knowing what Congress may do in any legislation until it is finally enacted, but in case we enter into an agreement, such as I have offered you today, which is my limit, I fully believe that it will be accepted and ratified by Congress.

RALPH EAGLE FEATHER: My friend, I am going to say a few words to you today. On a Saturday, a couple of weeks ago, I prepared an offer that quite a number of our people concurred in. I came here and showed it to you and since I presented it they have taken some of it off

and changed it, therefore I have been ashamed to come before you again to say anything. I want to speak of two points. [27] If I understood you right you said just now that there had been a Secretary who was in favor of giving the benefits in regard to allotments to our wives and he had stepped out and another Secretary stepped in and looked at it another way. That is the way I understand you. Therefore, I want to say something in regard to the matter. My friend, this man Burke is going to step out sometime in March, and I understand that the Secretary of the Interior will also step out about that time. My friend, whatever agreement we enter into here, it will probably be undone as it was before, therefore, my friend, we would like to wait until these people go out and new men come in that will be there for four years and then we can enter into some agreement. In that way we will be talking about something that will have some weight to it, but in this we consider there is none. Last night I attended that council and sat there as President in a chair at the table. I want to tell you how I understood those people. This is the talk they had last night. For the first three months they wanted \$8.00, the following three months they wanted \$4.50. They wanted \$2.50 an acre for the school lands that the Great Father wanted. All the surplus land was to go at \$4.50. That is the way I understood it. What I am telling you here is the truth. I have nothing over my face, but these are the words they said and that is the way the people understood it. They did not want anything to do with the Burke Bill. They considered that it was killed.

INSPECTOR MCLAUGHLIN: It is not killed. It is sleeping but alive and waiting to hear from me. As soon as I tap the wire as to what we conclude here, that bill will be alive.

RALPH EAGLE FEATHER: I am going to tell you the truth now. We have told you that we did not want to take this into consideration and I am going to tell you again. The man who proposed this is going to go out of office in a short time. The Secretary is going to go out before long and I told you I am afraid of this. The reason why I am afraid of this is because when you come here in [28] the future you will say this is all undone, as the man who made this Bill and the Secretary have gone out of office and this is all undone. Probably you will tell us that way again. I want to tell you that I am afraid of this Bill.

INSPECTOR MCLAUGHLIN: My friend, Ralph Eagle Feather, raised a question which if you all feel that way, I wish to correct, and disabuse your minds in relation to it. The Secretary of the Interior is similar to a judge sitting on a bench. He constructs certain acts of Congress, certain provisions of legislation as he views them. Another man may come in and take a different view same as a judge on a bench, but the rulings of a Secretary are different from an Act of Congress. One man may construe an act different from what another would. That paper which your agent brought in here yesterday from which I read the provision allowing three per cent interest on all deposits of minors retained in the Treasury, that was an Act passed by Congress. It became a law on the 21st day of last June and was formerly a Bill just like this Burke Bill is. This is only a Bill as yet, but it can pass the House in a few days, go to the Senate and after passing the Senate and being approved by the President, it becomes a law. As to the Secretary of the Interior going out of office the 4th of next March. I wish to say in that connection that he has held the office longer than any other person ever has. He has held that office eight years, and retires voluntarily on account of age. When he goes

out, his successor will be governed by the laws enacted by Congress exactly as the present Secretary has been, and the Secretary who succeeds Secretary Hitchcock will take up all unfinished business and carry it along as though no change had occurred. Secretaries of the Interior, Commissioners of Indian Affairs, members of Congress and Senators change from time to time, that is true, but we are never without a Congress, and this is a Bill now before that body and as soon as it has been passed by Congress it becomes a law. You also say that the member who [29] prepared this bill and introduced it in Congress is going out on the 4th of next March. That is true. His term expires the 4th of March, but his standing in the body of which he is a member is very high. He is a member of the Indian Committee, and in all northwestern Indian matters his views are invariably adopted by the Committee. Mr. Burke is not the only Congressman who is desirous of having this tract of land opened. He has simply voiced the sentiment of the people, being on the Committee and the proper person to introduce it. And I again repeat that it is my earnest belief, in case you do not consent to a reasonable agreement, that the Burke Bill will become a law before the 4th day of next March. The price per acre which I have offered you, together with the other conditions which I am ready and willing to incorporate in the agreement, are preferable to the provisions of each bill and you will realize a great deal more money from it.

SPOTTED EAGLE: You came here and told us something that we would consider. If we go to the Agent and ask him any question he says why should you ask me such a question. I always tell my people whenever the Great Father gives you a law, act upon it. My friend, the reason why I am standing here, I am going to tell you something. I went into a council the other day and I heard some hard words in that council. I consider that

you are a big man and the reason I went to the other council is because I wanted to hear some of your words there. You told me that everybody has a right to discuss this matter. Some of the chiefs are sent to the council by their people with lots of names. These names are the same as if the parties represented were present. Some of the speakers had the paper which you say is not killed. The interpreter here has mentioned \$6.00, which everybody talked about today and sneeze over it, and he said that this paper, the Burke Bill, was killed, and I was thinking about it. I considered what we are talking about and they had election and had three different votes, but I did not vote on the questions. They voted to annul this paper and I knew that [30] it was going to be this way when we came here, and that is the reason I did not vote. There were two ex-schoolboys in the talk and some who were lying to them. The interpreter mentioned about this money three different ways. Of course he did not mention any \$2.50 to be paid for the remainder of the land. I do not want to talk anything about this, but I wanted to tell you what I heard.

ONE STAR: I want to say something. I came as one of the Indians, but there is one thing I am very anxious for, that is the reason I came here to see you my friend. Some of my children have no land, my grand children have no land, my nephews have no land. Those are the principal points that I come here for. We gave you the paper, my friend, and you took it with you and you come back with what was going to be all right, that is the reason I am in favor of this myself. Us Indians if we have \$100 each every day we would spend it all quick. Now, last night we decided that we should have \$6 an acre for the land. My friend, you should accept that and take that along. That pleases me. All the names that I have power to use, I give them to that man sitting over there, he is Hollow Horn Bear.

WALTER BULLMAN: I am living yet. I am going to tell you just one word. The Great Father wants a portion of our land and have been telling us this for several days. You ask us what we want for our land and what our wishes are and we have told you. We have mentioned \$6.00. You state \$5.00 and they say \$6.00. Also \$4.50 for the school lands. You offer \$2.50. That is laughable when you say that. What are we going to do with the surplus, nothing mentioned about that. Therefore I say that it has not been considered here. That has not been brought to the final point yet. Therefore we want our lands to be appraised as Reuben Quick Bear has mentioned to you. You say that our children are going to get so much land, but I will say to you that I do not think that will be done. My friend, [31] whatever we have said here we are saying that by our voice and that is very easily killed off, but we do not want that. Before consenting to anything we want our children allotted before we give our consent. I will say this that I have my doubts and I know that what we have said and asked for will never be done as a whole. I will say to you here that the people of this reservation did not give me power to come here and say anything, but you see yourself that this reservation is large and there are lots of our people who are not here. Therefore, my friend, let us stop and go home. There is not a large body of Indians here and we should not try to do anything to undermine the balance who are not here. I am trying to tell you the truth.

RED BULL: I want to say something is the reason I got up. I am not going to say that I want something myself personally. I belong to a camp of Indians out here and they told me what they want. I am here to represent them. I have seventy-two names which I am representing from my camp, and I have been depending on Hollow

Horn Bear, but I have got up now to speak for myself. In the first place, what my people want you have read it from your paper. Last night they had a council up here on the other side of the creek and I was there. They voted on a certain question. What they agreed upon last night and voted upon was what my people wanted and that is why I mention it. Several of these people you see in here now were not at that council, but those who were at that council were satisfied. The people that get up here and talk seem to be afraid to talk and I am a little afraid to talk and I am a little afraid to talk myself. Some of these people are afraid to say what they want and I am the same way. You have been here before and we have made treaties and that is why these people are afraid to say anything. I do not blame you any. I consider you an honest and straight man. I have reference to the land you came here for once before and mentioned \$2.50 for it to us. You told us at that time that if we did not agree to that \$2.50 that the Great Father [32] might make the price to suit himself. We have met with the same troubles that you told us we were liable to meet with at that time. I am afraid that we may meet with the same troubles again. Some of those people want a higher price and want to get all that they can and I am standing by those people. I will say to you that I am satisfied. I am getting \$8.00 and \$4.50 and \$2.50 for school lands. Also the very things that are mentioned on the paper there that you have read.

FRED BIG HORSE: I want to mention two things. They had a council here last night, and in that council they asked you if those things were going to be carried out and you said "Yes". They mentioned that they wanted a certain price and came here and told you and you told them that that would be carried out and therefore some got up and showed that the Burke Bill is

killed, but you get up today and say that the Burke Bill is not killed, but it is alive yet. We understand that this Burke Bill is not a law, but you come here and presented this proposition for us to take into consideration and offered a proposition and we have done it. You asked us to take this into consideration which we have, and what we want is to get the best we can out of it. We have taken it out into the different camps and taken this into consideration and talked it over and gave this man here (Reuben) power to come and mention the results of our council out in the country. I want to tell you and I want you to understand that whatever he says we have given him the power, the people who live out in the western part have come to that conclusion. They want the land appraised and we do not care whether this goes to the Great Father and becomes a law, but we are going to stand by what we want.

HOLLOW HORN BEAR: Whatever I have said to you here, I am going to stand by it. I am not going to look for anything beyond that. I [33] am going to stand by what I say. I am going home.

INSPECTOR MCLAUGHLIN: My friends, I wish you to understand this. I fully believe that there is not a man in this room but what has sufficient knowledge to understand the meaning of the Bill, because you people of Rosebud are very much advanced. Very many of you present here understand every word I say in English and speak and understand English as well as you do Sioux. When I came here last month I came under instructions dated the 5th day of December. I had heard that there was a Bill introduced by Mr. Burke, but had not seen it until I arrived when your agent showed me a copy of it. Upon reading it I discovered that it was exactly along the lines of the instructions which had been sent me by the Department, and I concluded that it had either been

prepared from the instructions I had received, or that my instructions had been prepared from this Bill. I found, upon looking at the Bill that it had been introduced by Mr. Burke on December 3rd, and that my instructions were dated Dec. 5th, two days later, and from reading the two and they corresponding exactly, I saw that this Bill had been prepared with the full knowledge and concurrence of the Department. Soon after my arrival I met you in council and we discussed the matter for four days along the lines of my instructions. You demanded certain things which I had not the discretionary power to grant and I therefore went to Washington to confer with the Secretary of the Interior and the Commissioner in relation to it. It was also necessary to confer with Mr. Burke to see if certain contemplated changes would meet his views, changes which I thought would be desirable, and I have told you the result of those conferences. I have made you a proposition today which is the limit of that which I can submit. You all seem to think that the Burke Bill is dead and gone, but any agreement that we may enter into will be along the lines of the Burke Bill, that is, the changes will be amendments to the [34] Burke Bill. This Bill has not yet become a law. There are none of you too ignorant in this room but to understand that your Tripp County lands have to be divided into three classes, with a certain stated price for each class. Some of you are trying to make it appear that there are only two classes of price, and that of the school lands mentioned. It is well known that in my talks with you I have explained time and again that this Bill stipulated \$5.00, \$4.00 and \$2.50 per acre, respectively, for your land. The amendments that will be necessary in the Burke Bill are the increase of price from \$5.00 per acre to \$6.00, for the first three months. Increasing the price of the next three months from \$4.00 to \$4.50 per acre, and

all the land after six months from the opening, including the school sections, \$2.50 per acre until the expiration of four years from date of opening, after which the surplus is to be sold at public auction to the highest bidder for cash at whatever it will bring. If that land is as good as you all say it is, it will all be taken in the first three months at \$6.00 per acre, but I do not believe that it will. I know that there is a good deal of land there that will not be taken at that first price, but I believe there will be a similar proportion there as was in Gregory County and that about three-fourths of it will be taken at the higher price. Therefore for the bulk of that cession you will receive \$6.00 an acre, and after that \$4.50 an acre, and all not taken under those two classes will be inferior land and will not be taken so quickly, but all untaken at the expiration of four years will be sold at public auction to the highest bidder. That is a clear statement of the case and should be readily understood by all of you. My friends, this is a matter representing a great many dollars to you people. Should this bill become a law, which I feel it will unless you concur in what I have suggested, in case it becomes a law, the proceeds from it will be much less than from the price which I have offered. [35] Besides the two other clauses in the proposition which you submitted to me and which I will incorporate, that is, providing for the million dollar fund, to draw 5% interest for ten years and the residue of the money remaining from the sale to be expended in the discretion of the Secretary of the Interior, upon a majority petition of you people through your agent. I will also incorporate a provision providing for allotments to all children born to you people so long as you have any unallotted lands. I know that such will be acceptable for the reason that Congress is considering a similar proposition this session. I believe that we might talk here until midnight and not

understand the matter any better than you must certainly now understand it, and I suggest that you decide upon some place as near here as possible where you can council among yourselves tomorrow. In the meantime, I will prepare an agreement along the lines I have spoken of and have it ready to read to you on Monday morning next, explaining it section by section and if it then meets your wishes it will be ready for your signature, every man to decide for himself without any undue influence being exerted upon him for or against. After hearing it read, if any of you sign it, well and good, and if not, there will be no harm done and we will part as friends.

TODD SMITH: When you came here first, you offered a proposition to us and we took it into consideration and lost a great deal of sleep here for several nights. The reason I go around and attend to these councils, I have a big family and I have a great many children and I want to do the best I can for them. I told you that we mentioned a certain price that we wanted at the time you were here before, and if those prices are changed I would not be in favor of it. You went away and came back and the price we asked for complies with what we agreed upon among ourselves at that time. The reason why I told you this I want to make my word good. I told you I was going to pull the other way if those prices were made different. My friend, who does this land belong to?

[36] INSPECTOR MCLAUGHLIN: It is the Rosebud Reservation, of course.

TODD SMITH: Yes, it belongs to us. Another question I want to ask you. Does the Great Father want this land himself?

INSPECTOR MCLAUGHLIN: It is for his people. The people of this great country.

TODD SMITH: He wants it for the people here in Dakota. You belong here in Dakota. You must remember

that is what land we have left. The reason why I say that I want to see my children and other children have some benefit of this land for 20 or 30 years ahead anyhow. I have not very many horses, but I have a few head. What I want for this land if it is going to be sold, I compare with my bunch of horses. I have not very many horses but they are classed. I want to class them as to the condition and put prices on them. That land ought to be sold the way I sell my horses. My friend, this is the last thing I want to say to you. You have made a coward out of the people on the Rosebud Reservation, and the reason why I say that is this. You say to us if we do not do this it is going to be made a law anyhow. My friend, you must take this into consideration that those poor people have friends in the East. All the people in the East do not want to kill us off. There are a few there who will try to protect us. If they are going to make a law to take this land away from us, it would be the same as stealing the land from us. Nothing just about it.

INSPECTOR MCLAUGHLIN: They will compensate you for it when it becomes a law as may be provided in the Act.

TODD SMITH: I want to tell you that I am going to stand by what I have told you.

INSPECTOR MCLAUGHLIN: My friend, Todd Smith's remarks were somewhat pointed and I wish to explain to all my friends here assembled that while I am a white man, my heart has grown fully one-half Indian. I have spent 37 years of my life with the Indians, [37] nearly all of my active years of manhood, and I have an earnest sympathy for the Indians of all tribes and particularly the Sioux, with whom I have been associated so closely for many years. If I had the power to make Indian Reservations, I would leave the Great Sioux Reservation undisturbed, because I know it would be

much more pleasing to the Sioux People, but, my friends, you must bear in mind that this is an age of progress. Everything is moving rapidly. We cannot stem the tide, but must go with the current else be stranded in a bend of the stream so driftwood. We have to meet conditions as they are and all surplus lands available in the United States will soon be opened to settlement. I fully believe that ten years hence there will not be a surplus foot of land on any reservation. We might just as well try to swim up your Rosebud Creek in the spring when deep snows in the hills are melting, and when the water rushed down like a torrent and carries everything before it, as to try to keep back settlement of unoccupied lands. Do not think, my friends, that I am speaking in a way threatening you or trying to force you, as such is far from my intentions. I regard it my duty as a friend of the Indian and as a representative of the Government, to tell you the facts just as I know them, believing that your Tripp County lands will be opened to settlement whether you consent to it or not, and I would wish you to be a party to the transaction by you people consenting to the reasonable proposition which I have presented. I will, as already stated, prepare an agreement and have it ready next Monday morning to submit and explain to you, after which it will be ready for the signatures of those who consent to its provisions.

HIGH HAWK: I understand just a small part of your words. A while back there was some words mentioned similar to this, and, my friend, you knock some of your words off. Whatever I say I want to say in a quiet way. I am glad when you say that you are going to show us liberty in touching the pen. You are not going to urge [38] anybody to touch or anyone not to touch. You say that whatever you have read here and what we want will become a law, and guarantee that it will become a law. I

will follow up your track. I am going down to Washington to hear. I am going down there when you go down and if you take any of these words off of the paper, I am coming back here and tell those people that they have taken some more words off of our friend. I always think that a man tells the truth whenever he says anything, therefore I say I am going to follow up your tracks and go to Washington. The reason I say this is I want you to carry it out. That is all I have to say.

Council adjourned at 5 o'clock, P.M.

Council met at 2 o'clock, P.M., Jan. 21, 1907.

INSPECTOR MCLAUGHLIN: My friends, I am pleased to see so many of you present. As I promised you in our last council, I have prepared an agreement along the lines we determined upon, strictly in accordance with what I explained to you and promised last Friday that I would do and I will now read the prepared agreement.

Reads agreement dated January 21st, 1907.

I have now read the agreement which has been very carefully worded and along the lines exactly as talked of with you in our previous councils. It is clear in every provision and your interests are well protected. There is not a word that could be added to this agreement that would improve it, and no word should be taken from it. I regard it a perfect document prepared along the lines on which we discussed and reached an agreement upon. I now ask you if this meets your wishes.

MANY VOICES: How. (Yes)

INSPECTOR MCLAUGHLIN: I have signed this agreement and it is ready for the signatures of any others. I have written my name here.

HOLLOW HORN BEAR: I want to know if that goes through all right, if it is successful, all those outside cattle (grazing permit) shall be taken off the reservation?

INSPECTOR MCLAUGHLIN: That is a question which I am unable to [39] answer definitely. As I regard it, it will take two years to have these allotments made, those who want to change their allotments and allot to the children, and it will be probably two years before Tripp County can be opened. I should think that during that time cattle may be ranging there and you will be receiving pay for it. After your Tripp County lands have been opened and as you will be receiving many cattle of your own, I do not think that there will be room for any stock on your reservation other than your own.

Hollow Horn Bear then stepped forward and signed the agreement, followed by others until 43 persons had attached their signatures thereto, whereupon, the council adjourned Sine Die, at five o'clock, P.M.

I hereby certify that the foregoing thirty-nine typewritten pages is a correct transcription of shorthand notes taken by me of Councils held by James McLaughlin, U.S. Indian Inspector, with the Indians of the Rosebud Reservation, So. Dak., from January 17th to 21st, inclusive, 1907.

/s/ Thomas F. Murphy
Assistant Clerk.

Rosebud Agency, S.D.)
January 23rd, 1907.)

[#21A]

(Excerpt from letter dated February 12, 1907 from Inspector McLaughlin to the Secretary of the Interior (N.A. Group 75 IBA letters received, 1881-1907, 17945-Land-1907)

[p.3] After a full discussion of the different propositions, I prepared the agreement embracing the provisions as agreed upon, which, after being read and explained to the Indians assembled, was accepted and the agreement was immediately signed by 43 Indians of those present. Then, in order to obtain the required number of signatures and make it unnecessary for the Indians to travel long distances from their homes to the Agency for that purpose in the cold weather, I visited the headquarters of the several districts of the reservation where the Indians of the respective districts met me, thus visiting Spring Creek, Cut Meat, Butte Creek, Bad Nation, Big White River, Bull Creek, and Ponca Creek stations, at which points I explained the provisions of the agreement to the Indians assembled and received the signatures of all concurring in the agreement.

Some opposition was met with in the beginning, particularly in the Cut Meat and Black Pipe districts, but it was

[#22]

(Enactment of H.R. 24987, 59th Congress 2d. Session (1907))

[Act of Mar. 2, 1907 ch. 2536, 34 Stat. 1230]

CHAP. 2536.—An Act To authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range twenty-five west of the sixth principal meridian, except such portions thereof as have been, or may hereafter be, allotted to Indians: *Provided*, That sections sixteen and thirty-six of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose.

Sec. 2. That the land shall be disposed of by proclamation, under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted

to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: *Provided*, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot one hundred and sixty acres of land to each child of Indian parentage whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation who is living at the time of the passage and approval of this Act and who has not heretofore received an allotment: *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged.

Sec. 3. That the price of said lands entered as homesteads under the provisions of this Act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, six dollars per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall have opened for settlement and entry, four dollars and fifty cents per acre; after the expiration of six months after the same shall have been opened for settlement and entry the price shall be two dollars and fifty cents per acre. The price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry,

and the balance in five equal annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the same price that it was first entered: *And provided*, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law, where the price of the land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry shall be sold to the highest bidder for cash at not less than two dollars and fifty cents per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold after the said lands have been opened to entry for seven years may be sold to the highest bidder for cash, without regard to the above minimum limit of price.

Sec. 4. That the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site

purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe, in accordance with section twenty-three hundred and eighty-one of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided.

Sec. 5. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the Rosebud Reservation, in the State of South Dakota, the sum of one million dollars, which shall draw interest at three per centum per annum for ten years, the interest to be paid to the Indians per capita in cash annually, share and share alike; that at the expiration of ten years, after one million dollars shall have been deposited as aforesaid, the said sum shall be distributed and paid to said Indians per capita in cash; that the balance of the proceeds arising from the sale and disposition of the lands as aforesaid shall be deposited in the Treasury of the United States to the credit of said Indians and shall be expended for their benefit under the direction of the Secretary of the Interior, and he may, in his discretion, upon an application by a majority of said Indians, pay a portion of the same to the Indians in cash, per capita, share and share alike, if in his opinion such payments will be for the best interests of said Indians.

Sec. 6. That sections sixteen and thirty-six of the lands in each township within the tract described in section one of this Act shall not be subject to entry, but shall be reserved for the use of the common schools

and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the tract described herein, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Sec. 7. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one hundred and sixty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section six of this Act. And there is hereby appropriated the further sum of fifteen thousand dollars, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein: *Provided*, That the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Rosebud Indians.

Sec. 8. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said

Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided: *Provided*, That nothing in this Act shall be construed to deprive the said Indians of the Rosebud Reservation, in South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act.

Approved, March 2, 1907.

[#22A]

(Legislature history of H.R. 24987 which became the Act of March 2, 1907)

[41 Cong. Rec. 241 (1906-1907)]

Rosebud Reservation: bills for sale of surplus lands in (see bills S. 6618; H.R. 20527, 24987, 25608).

[41 Cong. Rec. 268 (1906-1906)]

H.R. 24987—

To authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Burke of South Dakota: Committee on Indian Affairs 1782.—Reported back with amendment (H.R. Report 7613) 3004.—Debated, amended, and passed House 3103-3105.—Referred after being debated, to Senate Committee on Indian Affairs 3182, 3183.—Reported back with amendments (S. Report 6838), 3264.—Debated, amended, and passed Senate 3323.—House disagrees to Senate amendment 3552.) Senate insists upon its amendments (*omitted in Record*).—Conference appointed 3552.—Conference report (H.R. Report 8109) made, submitted, and agreed to 3996, 4120, 4121.—Examined and signed 4312, 4316, 4402.—Approved by President 4630.

[41 Cong. Rec. 1782 (1907)]

PUBLIC BILLS RESOLUTIONS and MEMORIALS
INTRODUCED.

* * *

By Mr. BURKE of South Dakota: A bill (H.R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[41 Cong. Rec. 3004 (1907)]

Mr. BURKE of South Dakota, from the Committee on Indian Affairs, to which was referred the bill of the House (H.R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, reported the same with amendment, accompanied by a report (No. 7613); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

[41 Cong. Rec. 3103-3105 (1907)]

SALE OF UNALLOTTED LANDS IN
ROSEBUD RESERVATION.

Mr. BURKE of South Dakota. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H.R. 24987) to authorize the sale and disposition of portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

The Clerk read the bill, as follows:

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range 25 west of the sixth principal meridian, except such portions thereof as have been, or may hereafter be, allotted to Indians: *Provided*, That sections 16 and 36 of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools and paid for by the United States at \$2.50 per acre, and the same are hereby granted to the State of South Dakota for such purpose.

Sec. 2. That the land shall be disposed of by proclamation, under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in

such proclamation: *Provided*, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot 160 acres of land to each child of Indian parentage whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation who is living at the time of the passage and approval of this act and who has not heretofore received an allotment: *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Philippine insurrection, as defined and described in sections 2304 and 2305 of the Revised Statutes, as amended by the act of March 1, 1901, shall not be abridged.

Sec. 3. That the price of said lands entered as homesteads under the provisions of this act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, \$6 per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall have opened for settlement and entry, \$4.50 per acre; after the expiration of six months after the same shall have been opened for settlement and entry the price shall be \$2.50 per acre. The price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to

make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the same price that it was first entered: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section 2301, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law, where the price of the land is \$1.25 per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry shall be sold to the highest bidder for cash at not less than \$2.50 per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold after the said lands have been opened to entry for seven years may be sold to the highest bidder for cash, without regard to the above minimum limit of price.

Sec. 4. That the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks

and lots and disposed of under such regulations as he may prescribe. In accordance with section 2381 of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided.

Sec. 5. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the Rosebud Reservation, in the State of South Dakota, the sum of \$1,000,000, which shall draw interest at 8 per cent per annum for ten years, the interest to be paid to the Indians per capita in cash annually, share and share alike; that at the expiration of ten years, after \$1,000,000 shall have been deposited as aforesaid, the said sum shall be distributed and paid to said Indians per capita in cash; that the balance of the proceeds arising from the sale and disposition of the lands as aforesaid shall be deposited in the Treasury of the United States to the credit of said Indians and shall be expended for their benefit under the direction of the Secretary of the Interior, and he may, in his discretion, upon an application by a majority of said Indians, pay a portion of the same to the Indians in cash, per capita, share and share alike, if in his opinion such payments will be for the best interests of said Indians.

Sec. 6. That sections 16 and 36 of the lands in each township within the tract described in section 1 of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at \$2.50 per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, are lost

to said State of South Dakota by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the tract described herein, to locate other lands not occupied, not exceeding 2 sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Sec. 7. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$165,000, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section 6 of this act.

Sec. 8. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections 16 and 36 or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided: *Provided*, That nothing in this act shall be construed to deprive the said Indians of the Rosebud Reservation, in South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act.

The following committee amendments were read:

Page 2, line 16, after the word "is," insert "or was, in case of death."

Page 2, line 17, strike out the word "Rosebud" and insert the word "Sioux:" and after the word "Indians" insert the words "belonging on the Rosebud Reservation."

Page 3, line 21, after the word "law," insert "at the same price that it was first entered."

Section 3, page 3, amend as follows: Line 4, after the word "entry," strike out "five" and insert "six."

Line 7, after the word "dollars," insert "and 50 cents."

Section 5, page 5, amend as follows: Line 9, after the word "at," strike out the word "five" and insert "three."

The SPEAKER. Is there objection?

Mr. WILLIAMS. Mr. Speaker, reserving the right to object to the request to consider the bill in the House as in Committee of the Whole, the bill seems to be a rather long and complicated one, deals with a very important matter, and ought at least to receive very careful consideration. I will further state to the gentleman from South Dakota that I do not notice a single minority member of the committee from whence the bill comes, and so I have no one of whom to take counsel. I reserve the right to object.

Mr. BURKE of South Dakota. Mr. Speaker, the bill has the unanimous report of the Committee on Indian Affairs, in which committee it was very carefully considered. The bill is substantially in accord with an agreement which has just been made with the Indians, signed by forty-two more than a majority of the male Indians over the age of 18 years. It is in line with the recent bills that have been passed affecting the sale of the Indian reservations. It is along the line of the bill which passed in the Fifty-eighth Congress for the sale of that portion of this same reservation that is located

in Gregory County. The maximum price of the land in that bill was fixed at \$4 per acre, while the maximum price in this bill is \$6 per acre.

The Indians, as I have stated before, have agreed to the disposition of it under the terms of the bill. They will have left, after this land is disposed of, a reservation that is substantially 50 miles square, and there are only 5,000 Indians. I certainly hope, in view of the fact that no opposition developed from any source to the bill in its present form, that there will be no objection to the consideration of it at this time.

Mr. FINLEY. Will the gentleman yield for a question?

Mr. BURKE of South Dakota. Certainly.

Mr. FINLEY. Does not the gentleman think that the State of South Dakota should have land for school purposes, as is provided in the bill, and that the Government should pay for the land?

Mr. BURKE of South Dakota. I will answer that question by stating that in at least six different instances since South Dakota was admitted into the Union Congress has made an appropriation and paid for the school sections under the guaranty that was given to the State when we came into the Union.

Mr. FINLEY. Why is that where certain sections have been allotted or patented the Government is called upon to pay for sections 16 and 36?

Mr. BURKE of South Dakota. That refers to sections that have been allotted to the Indians, and it has always been the custom where school sections have been allotted to give to the State in lieu of such sections other sections, not exceeding two in any township.

Mr. FINLEY. Is it true that some of these lands have been allotted to the Indians?

Mr. BURKE of South Dakota. It is true that a portion of the lands have been allotted to the Indians.

Mr. FINLEY. Does the gentleman think the Government should be called upon to pay to the State of South Dakota for lands allotted to the Indians? Doesn't the land belong to the Indians? I ask the gentleman if that practice has been the usual one?

Mr. BURKE of South Dakota. We have heretofore appropriated to pay for sections 16 and 36 in every township, or where they have been taken to pay for a section in lieu thereof.

Mr. FINLEY. Has that been the rule where lands are allotted to Indians?

Mr. BURKE of South Dakota. Yes; that has been the rule and was the rule in the former Rosebud bill which passed the Fifty-eighth Congress, and is exactly in line with this provision, and the price is the same.

Mr. FITZGERALD. Will the gentleman yield for a question?

Mr. BURKE of South Dakota. Certainly.

Mr. FITZGERALD. The Commissioner of Indian Affairs recommended that all after the enacting clause be stricken out and the agreement be inserted and ratified. That has not been done, and that has not been the practice for several years. I wish to ask this question: Have the provisions of the treaty been inserted in this bill?

Mr. BURKE of South Dakota. I may say to the gentleman that they have been.

Mr. FITZGERALD. Is the gentleman able to state how many acres were sold at \$4 an acre under the bill which was passed opening that portion of the Rosebud Reservation of Gregory County two or three years ago?

Mr. BURKE of South Dakota. Somewhere near 250,000 to 300,000 acres out of 400,000 acres.

Mr. FITZGERALD. At \$4 per acre?

Mr. BURKE of South Dakota. Yes. The land that sold readily sold at \$4 per acre. But very little sold at the \$3 price. Since that the rougher portions have been taken at \$2.50. I may say to the gentleman, as he was familiar with that legislation, that under the agreement that was made with the Indians they had agreed to sell that land for \$1,040,000; that the opposition to that legislation came from the fact that the friends of the Indians were claiming they would not get as much under the terms of the bill as they would have gotten under the treaty. They will, however, receive nearly twice as much, and have already received over \$900,000, and if those that have taken lands pay up, as they undoubtedly will, there will be over \$1,600,000 received, with nearly 100,000 acres to be disposed of, which will be sold ultimately.

Mr. FITZGERALD. One of the objections that have since been made to the method by which that reservation was opened is based upon this alleged statement of facts, that a great number of persons who could not possibly obtain homesteads under the bill were brought great distances into South Dakota and that great suffering resulted from the fact that the time they were required to remain there practically exhausted their resources, and they had great difficulty, after their disappointment, in leaving South Dakota.

Mr. BURKE of South Dakota. I do not think that statement is founded on any facts.

Mr. FITZGERALD. The gentleman is familiar, of course, with that particular locality?

Mr. BURKE of South Dakota. Entirely so, and I was at the opening at the time it took place.

Mr. MANN. Will the gentleman yield for a question?

Mr. BURKE of South Dakota. Certainly.

Mr. MANN. How many people are supposed to have gone to South Dakota at the time of this previous opening?

Mr. BURKE of South Dakota. The total number of registrations was 105,000.

Mr. MANN. And how many people entered land?

Mr. BURKE of South Dakota. Twelve to fifteen hundred. I don't remember exactly, but not to exceed 2,000.

Mr. MANN. Not over 10 per cent?

Mr. BURKE of South Dakota. No.

Mr. MANN. What does the gentleman assume was the average cost to the people who went there, and how long a time did they have to remain there?

Mr. BURKE of South Dakota. They had to remain only a part of one day, or not to exceed one day. I don't know that there is any way of estimating what each one spent, but from eight to ten dollars.

Mr. MANN. They had to go there to make the registration?

Mr. BURKE of South Dakota. They had to go into the State, but not right to where the land is.

Mr. MANN. They had to go into the State to be registered?

Mr. BURKE of South Dakota. Yes.

Mr. MANN. Then they had to remain there if they wanted to obtain and fulfill a chance?

Mr. BURKE of South Dakota. No; they did not.

Mr. MANN. Oh, they did not have to remain there. Of course they could go home and come back.

Mr. BURKE of South Dakota. I may say to the gentleman they did not remain. Those that were successful at the drawing were noticed and had plenty of time to go there and get their filing. I think it was thirty days.

Mr. MANN. I know the complaint was made to me very bitterly at the time this opening was had, from people in our town who wanted to get in on the ground floor, that it was an expensive proposition—an expensive gamble. That is what it was. It has been charged that a great deal of land that was then sold at \$4 per acre was worth nearer \$40. Can the gentleman inform us about that?

Mr. BURKE of South Dakota. That is not true. Four dollars an acre was a fair price for the land. In fact, it was more, in my opinion, than I thought it was worth at the time, and it was disposed of largely because the people had an idea that it was of greater value than it was, due to the fact that it had received so much advertising during the time the legislation was in progress.

Mr. MANN. How much land is covered by this bill?

Mr. BURKE of South Dakota. About 1,000,000 acres.

The SPEAKER. Is there objection? [After a pause.] The chair hears none. The question is on the amendments.

The question was taken; and the amendments were agreed to.

The SPEAKER. The question now is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, read the third time, and passed.

On motion of Mr. Burke of South Dakota, a motion to reconsider the last vote was laid on the table.

[41 Cong. Rec. 3182-3183 (1907)]

ROSEBUD INDIAN RESERVATION LAND.

Mr. GAMBLE. I request the Senator from Vermont to yield to me that I may ask for the consideration of a bill which has come from the House of Representatives.

The VICE-PRESIDENT. Does the Senator from Vermont yield to the Senator from South Dakota.

Mr. PROCTOR. I do.

Mr. GAMBLE. I ask that House bill 24987, which came from the House to-day, be laid before the Senate, and I ask unanimous consent for its immediate consideration.

The VICE-PRESIDENT laid before the Senate the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect; which was read the first time by its title, and the second time at length, and by unanimous consent, the Senate as in Committee of the Whole, proceeded to its consideration.

Mr. GAMBLE. I send up two amendments to the bill.

The VICE-PRESIDENT. The Senator from South Dakota proposes an amendment, which will be stated.

The Secretary. On page 5, line 14, strike out the word "three" and insert "five" in lieu thereof; so that it will read:

Draw interest at 5 per cent per annum for ten years.

The amendment was agreed to.

The VICE-PRESIDENT. The second amendment proposed by the Senator from South Dakota will be stated.

The Secretary. On page 6, after the word "act" in line 24, it is proposed to insert:

And there is hereby appropriated the further sum of \$15,000, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein.

The amendment was agreed to.

Mr. KEAN. Mr. President, has this bill been reported by a committee?

The VICE-PRESIDENT. It is a House bill which the Chair laid before the Senate at the request of the Senator from South Dakota.

Mr. KEAN. Has it been before a Senate committee?

Mr. GAMBLE. A bill with substantially the same provisions was reported from the Committee on Indian Affairs to the Senate on the 13th of December. The only proposition there was that instead of a valuation or price fixed the lands should be appraised. A report was not filed for the reason that an inspector was out negotiating a treaty. The inspector succeeded in negotiating a treaty, and on the 14th of February the ratification of the treaty was authorized by bill from the Committee on Indian Affairs in the Senate. This bill provides substantially the form of the agreement, and the two amendments which I have offered make this bill conform to the agreement.

Mr. KEAN. I do not think the practice is a good one. Therefore I must object.

The VICE-PRESIDENT. Objection is made.

Mr. GAMBLE. I trust no objection will be interposed. It is a matter of great importance to the people of my State.

Mr. KEAN. Let the bill go to the committee. I have no objection to the bill, but the practice is not a good one.

Mr. GAMBLE. I will be very glad to make myself plain to the Senator from New Jersey. This matter has been considered twice by the Committee on Indian Affairs and has been favorably reported. The bill that was read here this morning and which has passed the House is in the identical language of the agreement. It is in conformity to the agreement with the Sioux tribe of Indians and with the statute, and it is a matter of great importance. The lands to be opened embrace about a million acres lying immediately west of the Rosebud Reservation, which was opened three years ago. If it is referred to the committee, the danger will be that it can not be considered at this session.

Mr. LODGE. Will the Senator from South Dakota allow me to make a suggestion?

Mr. GAMBLE. Certainly.

Mr. LODGE. If there is a similar bill on the Calendar covering the same subject-matter, it is open to the Senator to substitute this bill for the Senate bill.

Mr. KEAN. That is correct.

Mr. LODGE. He can take it up by unanimous consent tomorrow.

Mr. GAMBLE. I am very anxious to have the matter disposed of. It is one of great importance to the people of my State.

Mr. LODGE. I was pointing out to the Senator how he can pass it.

The VICE-PRESIDENT. Is there objection to the consideration of the bill?

Mr. ALDRICH. If the matter is of such supreme importance to anybody as the Senator from South Dakota suggests, it is very easy to refer the bill to the Committee on Indian Affairs and have it reported back at once. Otherwise we will establish a precedent which would be an extremely dangerous one, especially if it is

an important bill. I think it ought to go to the committee and be reported back in the usual way.

Mr. GAMBLE. I do not want to be unduly persistent in the matter. Possibly I do not make myself plain.

The VICE-PRESIDENT. The Chair will suggest that the debate is proceeding by unanimous consent. Is there objection to the explanation to be made by the Senator from South Dakota?

Mr. ALDRICH. I do not object to the explanation, but I shall insist that the bill go to the committee and be considered in the usual way.

Mr. GAMBLE. In reply to that, I want to say that this measure has been considered fully by the Committee on Indian Affairs of the Senate. The bill that is reported by the Senate Committee on Indian Affairs is the same language as this bill. This is a House bill. It passed the House Saturday. I called it up in this form so that there might be expedition in its passage. If it goes to the committee, the danger is there will not be opportunity to have it considered and will deny to it the privilege of passing at this session.

Mr. CLAY. Mr. President—

The VICE-PRESIDENT. Does the Senator from South Dakota yield to the Senator from Georgia?

Mr. GAMBLE. Certainly.

Mr. CLAY. I understood the Senator to say that a bill identical with this was before the Committee on Indian Affairs in the Senate, and had been reported by the Senate committee and is now on the Calendar.

Mr. GAMBLE. It is not on the Calendar.

Mr. CLAY. Then this bill could not be substituted for it. That is true.

Mr. GAMBLE. The report was authorized last Thursday.

The VICE-PRESIDENT. If there is objection, the bill will be referred to the Committee on Indian Affairs.

Mr. ALDRICH. I thought I made my position plain about it.

The VICE-PRESIDENT. The Chair so understood.

Mr. ALDRICH. It is not necessary to reiterate it.

The VICE-PRESIDENT. The Chair was about to state that the bill will be referred to the Committee on Indian Affairs.

[41 Cong. Rec. 3264 (1907)]

REPORTS OF COMMITTEES.

* * *

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, reported it with amendments, and submitted a report thereon.

[41 Cong. Rec. 3323 (1907)]

ROSEBUD INDIAN RESERVATION, S. Dak.

The bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted

lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Indian Affairs with an amendment, to insert at the end of section 7 the following:

And there is hereby appropriated the further sum of \$15,000, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

[41 Cong. Rec. 3552 (1907)]

UNALLOTTED LANDS IN ROSEBUD RESERVATION.

The SPEAKER laid before the House the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, with Senate amendments.

Mr. SHERMAN. Mr. Speaker, I ask unanimous consent to nonconcur in the Senate amendments and ask for a conference.

Mr. WILLIAMS. What are the amendments?

Mr. SHERMAN. There are two main amendments. One is changing the rate of interest the United States is to pay on the fund which is to be put into the Treasury. The House fixes the rate of interest on such fund at 3 per cent. The Senate changed it to 5 per cent.

The other provision is an appropriation for \$15,000, which should be made reimbursable, but the Senate did not make it so.

The SPEAKER. Does the gentleman from New York offer an amendment?

Mr. SHERMAN. No; I ask unanimous consent to nonconcur and go to conference.

The SPEAKER. The gentleman from New York asks unanimous consent to nonconcur in the Senate amendments and ask for a conference. Is there objection?

There was no objection.

The SPEAKER appointed as conferees on the part of the House Mr. Sherman, Mr. Burke of South Dakota, and Mr. Stephens of Texas.

[41 Cong. Rec. 3996 (1907)]

ROSEBUD (SOUTH DAKOTA) INDIAN RESERVATION.

Mr. GAMBLE submitted the following conference report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted

lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, having met in full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: That the Senate recede from its amendment No. 1.

That the House recede from its disagreement to the amendment of the Senate No. 2 and agree to the same with an amendment, adding the following proviso: "Provided, That the same shall be reimbursed to the United States from the proceeds received from the sale of lands described herein or from any money in the Treasury belonging to said Rosebud Indians;" and the Senate agreed to the same.

Robert J. Gamble,
Frank B. Brandegee,
Fred T. Dubois,

Managers on the part of the Senate.

J. S. Sherman,
Chas. H. Burke,
John H. Stephens,

Managers on the part of the House.

The report was agreed to.

[41 Cong. Rec. 4120-4121 (1907)]

ROSEBUD INDIAN RESERVATION.

Mr. BURKE of South Dakota. Mr. Speaker, I call up conference report on the bill H. R. 24987.

The SPEAKER. The Clerk will read the title.

The Clerk read as follows:

H. R. 24987. An act authorizing the sale and disposition of a portion of the surplus of unallotted lands in the Rosebud Reservation, in the State of South Dakota, and making appropriations and provision for carrying the same into effect.

Mr. BURKE of South Dakota. Mr. Speaker, I ask unanimous consent that the statement may be read in lieu of the report.

The conference report and statement are as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, having met in full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: That the Senate recede from its amendment numbered 1.

That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, adding the following proviso: "Provided, That the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Rosebud Indians;" and the Senate agree to the same.

Robert J. Gamble,
Frank B. Brandegee,
Fred T. Dubois.

Managers on the part of the Senate.

J. S. Sherman,
Chas. H. Burke,
John H. Stephens.

Managers on the part of the House.

The statement was read as follows:

STATEMENT.

The result of the conference is that the Senate recedes from its amendment No. 1.

The bill provides that from the proceeds derived from the sale of the land there shall be a million-dollar fund deposited in the Treasury and interest shall be paid thereon for ten years. The bill of the House named the rate of interest at 3 per cent; the amendment of the Senate changed the rate from 3 to 5. The House recedes from its disagreement to amendment No. 2 with an amendment. This amendment of the Senate provides an appropriation of \$15,000, or so much thereof as may be necessary for the purpose of making the allotments provided by the bill. The amendment is a proviso that the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described in the bill or from any money in the Treasury belonging to said Rosebud Indians.

J. S. Sherman,
Chas. H. Burke,
John H. Stephens.

Managers on the part of the House.

The SPEAKER. The question is on agreeing to the conference report.

The question was taken; and the conference report was agreed to.

[41 Cong. Rec. 4312 (1907)]

H. R. 24987. An act to authorize the sale and disposition of a portion of the surplus or unallotted

lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

[41 Cong. Rec. 4316 (1907)]

H. R. 24987. An act to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect;

[41 Cong. Rec. 4402 (1907)]

H. R. 24987. An act to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect;

[41 Cong. Rec. 4630 (1907)]

H. R. 24987. An act to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect;

(#22B — House of Representatives report to accompany H.R. 24987)

[H. R. Rep. No. 7613, 59th Cong. 2d Sess. 1-8 (1907)]

SALE AND DISPOSITION OF CERTAIN LANDS IN
ROSEBUD INDIAN RESERVATION, S. DAK.

February 14, 1970.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Burke, of South Dakota, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H.R. 24987.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in South Dakota, and making an appropriation and provision to carry the same into effect, having had the same under consideration, submit the following report and recommend that the bill be amended as follows:

Page 2, line 16, after the word "is," insert "or was, in case of death."

Page 2, line 17, strike out the word "Rosebud" and insert the word "Sioux;" and after the word "Indians" insert the words "belonging on the Rosebud Reservation."

Page 3, line 21, after the word "law," insert "at the same price that it was first entered."

Section 3, page 3, amend as follows: Line 4 after the word "entry,," strike out "five" and insert "six."

Line 7, after the word "dollars," insert "and fifty cents."

Section 5, page 5, amend as follows: Line 9, after the word "at," strike out the word "five" and insert "three."

And as so amended that the bill do pass.

The purpose of this bill is to authorize the opening and sale of that portion of the Rosebud Reservation in South Dakota known as Tripp County, and it affects all that portion of the reservation east of range 25 of the fifth principal meridian south of the Big White River, and embraces about 1,000,000 acres.

In the second session of the Fifty-eighth Congress a law was passed authorizing a sale of so much of this same reservation as was located in Gregory County, the tract affected being about one-half the area embraced in the tract affected by the pending bill and lying immediately adjoining and east of Tripp County.

The sale and disposition of the lands in Gregory County have proven very satisfactory, and the lands have been disposed of at the prices provided in the law, except such portions involving about 100,000 acres which are rough and undesirable, being bluffs along the Missouri River.

The opponents to the passage of the aforesaid law based their claims largely upon the assumption that by the terms that were proposed by this law the Indians would not receive as much as they would have received by the terms of an agreement which they made for the cession and sale of that portion of their reservation, namely, \$1,040,000. The opening did not take place

until August, 1904, and yet up to February 2, 1907, there had been paid into the Treasury and credited to the Indians by reason of this sale the sum of \$925,976.38, as will be shown by the following letter from the Secretary of the Treasury:

Treasury Department,
Office of the Secretary,
Washington, February 2, 1907.

Sir: In reply to your request of the 2d instant to be informed as to the amount of money which has been received and credited to Rosebud Indians of South Dakota by reason of the sale of a portion of the Rosebud Reservation in Gregory County, S. Dak., disposed of under the act of Congress of April 23, 1904, I have the honor to advise you that the receipts on this account covered into the Treasury under the act in question amount to \$852,117.63, and that by the same act of the school sections of the Rosebud Reservation granted to the State, and for which the fund of the Indians was to receive payment, have increased said fund in the sum of \$73,858.75, so that the fund of "Proceeds of Rosebud Reservation, S. Dak.," under the said act has amounted to date to \$925,976.38.

Respectfully,

L. M. Shaw,
Secretary.

Hon. Charles H. Burke,
House of Representatives.

From a careful estimate of the amount that will be received from those who have entered the land and have not yet paid therefor in full, there will be about \$700,000 more paid into the Treasury, and besides there are 100,000 acres to be disposed of that ought to

sell for not less than \$200,000, so that as the result of the law passed as before stated, the Indians will receive in the end nearly double what they would have gotten had their agreement been ratified. The price of the land in that law is \$4 per acre during the first three months, \$3 during the second three months, and then \$2.50 per acre.

By the terms of the bill under consideration, the price of the land has been fixed at \$6 per acre during the first three months, \$4.50 during the second three months, and then \$2.50 per acre. All lands remaining undisposed of after four years may be sold for cash under rules and regulations to be prescribed by the Secretary of Interior, at not less than \$2.50 per acre, and all lands remaining undisposed of at the expiration of seven years after the same shall be opened to settlement shall be sold without regard to the above minimum limit of price.

Section 4 of the bill, authorizes the Secretary of the Interior to reserve lands for town-site purposes, and to dispose of the same for the benefit of the Indians, and it is estimated that this will be of very much greater benefit to the Indians than if the town sites were to be disposed of under the general town-site laws.

The bill further provides that before the proclamation of the President, declaring the land open for settlement, the Indians within the reservation may relinquish allotments and select allotments in any other portion of the reservation, including the tract affected by this bill. The purpose of this is to provide an opportunity for the Indians to relinquish worthless lands that they may have selected heretofore, and take better or more desirable lands in lieu thereof.

The bill is substantially in accordance with an agreement recently negotiated with the Rosebud Indians,

which was signed by more than a majority of the male adult Indians, and it was signed by all the members of the business committee of the tribe, with the exception of one.

Dr. E. J. De Bell, who has resided upon the reservation at the agency for many years, and who has always been known to stand for what he believed was for the best interests of the Indians, in a letter under date of February 7, 1907, wrote Mr. Herbert Welsh, of the Indian Rights Association, of Philadelphia, as follows:

Rosebud Agency, S. Dak., *February 7, 1907.*

My Dear Sir: I send you herewith a copy of the McLaughlin agreement as signed by about 700 of our Indians, about 40 of a majority over the whole number of adult males of this tribe. I believe they will all sign except about 30 of the old men, who hardly ever sign any kind of a paper.

I consider the bill a good one for the Indians and the most fair one ever presented by the Government to any tribe of Indians.

When Colonel McLaughlin came here all the leading men of the tribe and their advisers got up a bill and asked for the provisions of the bill as now signed and the Indians got all they asked for, and I believe that all of the people, with very few exceptions, are satisfied.

You know me well enough to know that had I thought the Indians were not getting a square deal I would have fought the agreement as long as I had a nickel. I not only did not oppose it, but on the contrary I advised them to sign the bill.

I think it is a very excellent agreement and should be ratified by Congress. They will get all the land is worth at this time, and the matter of

getting their children allotted will be of very great importance to them.

Yours, very truly,

E. J. De Bell.

Mr. Herbert Welsh,
Secretary Indian Rights Association, Philadelphia, Pa.

The committee are of the opinion that the bill is extremely fair and liberal toward the Indians, and that it is not only satisfactory to the Indians themselves, but to the Department of Government and its officers who are charged with the duty of administering the affairs of the Indians and looking out for their best interests.

Section 6 of the bill reserves sections 16 and 36 in each township for the use of the common schools, and grants the same to the State of South Dakota, and section 7 make an appropriation to pay for the same at \$2.50 per acre. This is following the precedents which have heretofore been established in the opening of other reservations in South Dakota, and is based upon section 10 of the act of Congress admitting South Dakota into the Union, approved February 22, 1889. Said section is as follows:

Sec. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any part thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may

provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants not to indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands restored to and become a part of the public domain.

The following are the precedents:

By section 30 of the act opening and dividing the Great Sioux Reservation, sections 16 and 36 were granted to the State, and an appropriation of \$1.25 per acre was made to pay for same. Act approved March 2, 1889. (25 Stat. L., 898.)

By section 30, act approved March 3, 1891, opening the Sisseton and Wahpeton Reservation, the school sections were ceded to the State and an appropriation made, and the same were paid for at \$2.50 per acre. (26 Stat. L., 1039).

By act of August 15, 1894, opening the Yankton Reservation, the school sections were ceded to the State and paid for at \$3.75 per acre. (28 Stat. L., 313.)

Act providing for sale of Rosebud Reservation, in Gregory County, school sections were ceded and paid for at \$2.50 per acre, and act authorizing sale of a portion of the Lower Brule Reservation, first session of this (Fifty-ninth) Congress, school sections were ceded to the State and paid for at \$1.25 per acre.

For the purpose of showing that the bill has the approval of the Secretary of the Interior and the Commissioner of Indian Affairs, their letters are attached hereto, together with a copy of the agreement

negotiated by James McLaughlin, United States Indian inspector.

Department of the Interior,
Washington, February 14, 1907.

Sir: By your reference of the 28th ultimo, I am in receipt for report of copy of H. R. 24987, being a bill "to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect," and in reply I inclose herewith copy of a letter from the Commissioner of Indian Affairs, dated the 14th instant, stating that the report on H. R. 24987 has been held pending the receipt of an agreement concluded by Inspector McLaughlin with the Indians of the Rosebud Reservation, which has now been received, and the Commissioner recommends that all that part of the bill after the words "A bill" be stricken out, and that the agreement, as concluded, together with a preamble and enacting clause, etc., be inserted in lieu thereof, which recommendation has the approval of the Department.

Very respectfully, E. A. Hitchcock,
Secretary.

The Chairman Committee on Indians Affairs.
House of Representatives.

Department of the Interior,
Office of Indian Affairs,
Washington, February 14, 1907.

Sir: I am in receipt by departmental reference for consideration and report of a letter from Hon. James S. Sherman, chairman of the Committee on Indian Affairs, House of Representatives, inclosing a copy of H. R. 24987, entitled "A bill to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect," upon which he requests a report.

According to an informal understanding with Hon. Charles H. Burke, the author of the bill, report on the reference was deferred pending the receipt of the agreement concluded by James McLaughlin, United States Indian inspector, with the Indians of this reservation.

I am now in receipt by your reference of Inspector McLaughlin's report inclosing the agreement concluded by him.

I have considered H. R. 24987, and recommend that all that part of the bill after the words "A bill" be stricken out, and that the agreement as concluded, together with a preamble and enacting clause, with a second section providing for appropriations to carry the agreement into effect, be inserted in lieu thereof.

I have prepared a title for the ratification of the agreement, as follows:

"An act to ratify an agreement with the Indians residing on the Rosebud Indian Reservation, in the State of South Dakota, and to make appropriations for carrying the same into effect."

I inclose herewith a copy of this letter and of the bill H. R. 24987, amended as suggested, and

respectfully recommend that, should this action meet with your approval, they be transmitted to the chairman of the Committee on Indian Affairs with favorable recommendation.

Very respectfully, F. E. Leupp,
Commissioner.

The Secretary of the Interior.

AN ACT To ratify an agreement with the Indians residing on the Rosebud Indian Reservation, in the State of South Dakota, and to make appropriations for carrying the same into effect.

Whereas James McLaughlin, United States Indian inspector, did, on the twenty-first day of January, nineteen hundred and seven, conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement, made and entered into on the twenty-first day of January, nineteen hundred and seven, by and between James McLaughlin, United States Indian inspector on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

Article I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration herein named and in the manner hereinafter provided, do hereby cede, grant, and relinquish to the United States all claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation lying south of Big White River and east of range twenty-five west, of the sixth principal meridian in South Dakota, except such portions thereof as have been, or may hereafter be,

allotted to Indians: *Provided*: That sections sixteen and thirty-six of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools of the State of South Dakota, and paid for by the United States at two dollars and fifty cents per acre.

Art. II. In consideration of the lands ceded and relinquished by Article I of this agreement, the United States stipulates and agrees to dispose of the same, as hereinafter provided, under the provisions of the homestead and town-site laws, or by sale for cash, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter upon any of said lands, except as prescribed in such proclamation: *Provided*, That prior to said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot one hundred and sixty (160) acres of land to each child of Indian parentage, whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation, who is living at the date of the approval of the act ratifying this agreement and who has not heretofore received an allotment, and such allotments shall be made prior to the lands being opened to settlement and entry, upon any unallotted land within said reservation, including the tract ceded by Article I of this agreement: *And provided further*, That allotments shall be made to children of the Indians, parties hereto, who have not pre-

viously received an allotment, so long as the said Indians are possessed of any unallotted reservation lands.

Art. III. It is agreed that the price of said lands entered as homesteads shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened to settlement and entry, six dollars per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall have been opened to settlement and entry, four dollars and fifty cents per acre. After the expiration of six months and within four years after the same shall have been opened to settlement and entry, the price shall be two dollars and fifty cents per acre. That the price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. That in case any entryman fails to make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his or her entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law in the same price that it was first entered. That the lands disposed of under the town-site law shall be paid for at the price provided by law. That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry may be, in the discretion of the Secretary of Interior, sold to the highest bidder for cash, without regard to the above minimum limit of price.

Art. IV. It is further agreed that of the amount to be derived from the sale of said lands, as stipulated in Article III of this agreement, the sum of one million dollars (\$1,000,000) shall, from the first moneys received from the sale of these lands, be devoted to the creation of a fund of one million dollars, which shall be deposited in the United States Treasury to the credit of the Indians, parties hereto, and which shall draw five per cent interest for a period of ten years from the date of such deposit, which interest shall be paid to the beneficiaries per capita in cash annually. That at the expiration of ten years after said fund of one million dollars shall have been deposited in the United States Treasury to the credit of the Rosebud Indians, said fund shall be equally distributed among the beneficiaries, parties hereto:, *Provided*, That the proceeds derived from the sale of said lands, after the one million dollars of the ten years' interest-bearing fund herein provided for has been created, shall be expended for the benefit of the Rosebud Indians, in the discretion of the Secretary of the Interior, upon an application by a majority petition of the Indians, parties hereto, through and upon the recommendation of the Indian agent in charge of the Rosebud Indian Reservation.

Art. V. It is further agreed that sections sixteen and thirty-six of the lands in each township of the lands hereby relinquished shall not be subject to entry, but shall be reserved for the use of the common schools of the State of South Dakota, and paid for by the United States at two dollars and fifty cents per acre and in case any of the said sections, or parts thereof, of the land in the tract hereby relinquished are lost to the State of South Dakota by reason of allotment thereof to Indians or otherwise the governor of said State, with the approval of the Secretary of the Interior, may

locate other lands of similar character and equal value not occupied, and not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Art. VI. It is the understanding that nothing in this agreement contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent, in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being understood that the United States shall act as trustee for said Indians to dispose of said lands and to expend for said Indians and pay over to them the proceeds received from the sale thereof only as received, as herein provided.

Art. VII. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

In witness whereof the said James McLaughlin, U.S. Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at the Rosebud Agency, South Dakota, this twenty-first day of January, A. D. nineteen hundred and seven.

James McLaughlin, [Seal.]
U.S. Indian Inspector.

No.	Name.	Age.	Mark.	Seal and thumb imprint.
1	Hollow Horn Bear . . .	55	Seal (x).
(And 704 others.)				

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Reservation, South Dakota; that it was fully understood by them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Louis Bordeaux,
Louis Roubideau,
Interpreters.

Rosebud Agency, South Dakota, *February 5, 1907.*

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and of the 705 Indians of the Rosebud Reservation to the foregoing agreement.

Wm. F. Schmidt,
Issue Clerk.

C. H. Bennett,
Farmer, Cut Meat District.

Ernest Falconer,
Farmer, Black Pipe District.

Frank Robinson,
Farmer, Little White River District.

O. E. Steinbaugh,
Farmer, Butte Creek District.

Teen Fenenga,
Farmer, Big White River District.

Kranth H. Cressman,
Teacher in Charge, Ponca District.
 Louis Bordeaux,
Ex-Farmer, Agency District

Rosebud Agency, South Dakota, *February 5, 1907.*

Indians over 18 years of age

belonging on the
 Rosebud Reservation, South Dakota, is 1,368, of
 whom 705 have signed the foregoing agreement.

Edward B. Kelley,
U.S. Indian Agent.

Rosebud Agency, South Dakota, *February 5, 1907.*

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same is hereby, accepted, ratified, and confirmed.

Sec. 2. For the purpose of carrying this agreement into effect there is hereby appropriated and set aside in the Treasury of the United States, for payment to said Indians for lands granted to the State of South Dakota, the sum of one hundred and seventy-six thousand dollars, or so much thereof as may be necessary, which shall draw interest as provided in Article V of the agreement. And there is hereby appropriated the further sum of fifteen thousand dollars, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein.

[#22C]

(Senate report to accompany H. R. 24987)

[S. Rep. No. 6838, 59th Cong. 2d Sess. 1-7 (1907)]

SALE AND DISPOSITION OF CERTAIN LANDS
 IN THE ROSEBUD INDIAN RESERVATION
 IN SOUTH DAKOTA.

February 19, 1907.—Ordered to be printed.

Mr. GAMBLE, from the Committee on Indian Affairs,
 submitted the following

REPORT.

[To accompany H. R. 24987.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 24987), to authorize the sale of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect, having had the same under consideration, submit the following report and recommend that the bill do pass with the following amendments:

On page 5, in line 14, strike out the word "three" and insert in lieu thereof the word "five."

On page 6, in line 24, after the word "act" add the following:

And there is hereby appropriated the further sum of fifteen thousand dollars, or so much

thereof as may be necessary, for the purpose of making the allotments provided for herein.

Your committee submits the report of the House Committee on Indian Affairs accompanying said bill, and makes it a part of this report.

The House report is as follows:

The purpose of this bill is to authorize the opening and sale of that portion of the Rosebud Reservation in South Dakota known as Tripp County, and it affects all that portion of the reservation east of range 25 of the fifth principal meridian south of the Big White River, and embraces about 1,000,000 acres.

In the second session of the Fifty-eighth Congress a law was passed authorizing a sale of so much of this same reservation as was located in Gregory County, the tract affected being about one-half the area embraced in the tract affected by the pending bill and lying immediately adjoining and east of Tripp County.

The sale and disposition of the lands in Gregory County have proven very satisfactory, and the lands have been disposed of at the prices provided in the law, except such portions involving about 100,000 acres which are rough and undesirable, being bluffs along the Missouri River.

The opponents to the passage of the aforesaid law based their claims largely upon the assumption that by the terms that were proposed by this law the Indians would not receive as much as they would have received by the terms of an agreement which they made for the cession and sale of that portion of their reservation, namely \$1,000,000. The opening did not take place until August, 1904, and yet up to February 2, 1907, there had been paid into the Treasury and credited to the Indians by reason of this sale the sum of

\$925,976.38, as will be shown by the foregoing letter from the Secretary of the Treasury:

Treasury Department,
Office of the Secretary,
Washington, February 2, 1907.

Sir: In reply to your request of the 2d instant to be informed as to the amount of money which has been received and credited to Rosebud Indians of South Dakota by reason of the sale of a portion of the Rosebud Reservation in Gregory County, S. Dak., disposed of under the act of Congress of April 23, 1904, I have the honor to advise you that the receipts on this account covered into the Treasury under the act in question amount to \$852,117.63, and that by the same act the school sections of the Rosebud Reservation granted to the State, and for which the fund of the Indians was to receive payment, have increased said fund in the sum of \$73,858.75, so that the fund of "Proceeds of Rosebud Reservation, S. Dak.," under the said act has amounted to date to \$925,976.38.

Respectfully,

L. M. Shaw,
Secretary.

Hon. Charles H. Burke,
House of Representatives.

From a careful estimate of the amount that will be received from those who have entered the land and have not yet paid therefor in full, there will be about \$700,000 more paid into the Treasury, and besides there are 100,000 acres to be disposed of that ought to sell for not less than \$200,000, so that as the result of the law passed as before stated, the Indians will receive in the end nearly double what they would have gotten had their agreement been ratified. The price of the land in that law is \$4 per acre during the first three months,

\$3 during the second three months, and then \$2.50 per acre.

By the terms of the bill under consideration the price of the land has been fixed at \$6 per acre during the first three months, \$4.50 during the second three months, and then \$2.50 per acre. All lands remaining undisposed of after four years may be sold for cash under rules and regulations to be prescribed by the Secretary of the Interior at not less than \$2.50 per acre, and all lands remaining undisposed of at the expiration of seven years after the same shall be opened to settlement shall be sold without regard to the above minimum limit of price.

Section 4 of the bill authorizes the Secretary of the Interior to reserve lands for town-site purposes, and to dispose of the same for the benefit of the Indians, and it is estimated that this will be of very much greater benefit to the Indians than if the town sites were to be disposed of under the general town-site laws.

The bill further provides that before the proclamation of the President, declaring the land open for settlement, the Indians within the reservation may relinquish allotments and select allotments in any other portion of the reservation, including the tract affected by this bill. The purpose of this is to provide an opportunity for the Indians to relinquish worthless lands that they may have selected heretofore, and take better or more desirable lands in lieu thereof.

The bill is substantially in accordance with an agreement recently negotiated with the Rosebud Indians, which was signed by more than a majority of the male adult Indians, and it was signed by all the members of the business committee of the tribe, with the exception of one.

Dr. E. J. De Bell, who has resided upon the reservation at the agency for many years, and who has always been known to stand for what he believed was for the best interests of the Indians, in a letter under date of February 7, 1907, wrote Mr. Herbert Welsh, of the Indian Rights Association, of Philadelphia, as follows:

Rosebud Agency, S. Dak., *February 7, 1907.*

My Dear Sir: I send you herewith a copy of the McLaughlin agreement as signed by about 700 of our Indians, about 40 of a majority over the whole number of adult males of this tribe. I believe they will all sign except about 30 of the old men, who hardly ever sign any kind of a paper.

I consider the bill a good one for the Indians and the most fair one ever presented by the Government to any tribe of Indians.

When Colonel McLaughlin came here all the leading men of the tribe and their advisers got up a bill and asked for the provisions of the bill as now signed and the Indians got all they asked for, and I believe that all of the people, with very few exceptions, are satisfied.

You know me well enough to know that had I thought the Indians were not getting a square deal I would have fought the agreement as long as I had a nickel. I not only did not oppose it, but on the contrary I advised them to sign the bill.

I think it is a very excellent agreement and should be ratified by Congress. They will get all the land is worth at this time, and the matter of getting their children allotted will be of very great importance to them.

Yours, very truly,

E. J. De Bell.

Mr. Herbert Welsh,
Secretary, Indian Rights Association, Philadelphia, Pa.

The committee are of the opinion that the bill is extremely fair and liberal toward the Indians, and that it is not only satisfactory to the Indians themselves, but to the Department of the Government and its officers who are charged with the duty of administering the affairs of the Indians and looking out for their best interests.

Section 6 of the bill reserves sections 16 and 36 in each township for the use of the common schools, and grants the same to the State of South Dakota, and section 7 makes an appropriation to pay for the same at \$2.50 per acre. This is following the precedents which have heretofore been established in the opening of other reservations in South Dakota, and is based upon section 10 of the act of Congress admitting South Dakota into the Union, approved February 22, 1889. Said section is as follows:

"Sec. 10, That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any part thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be

subject to the grants nor to indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands restored to and become a part of the public domaine.

The following are the precedents:

By section 30 of the act opening and dividing the Great Sioux Reservation, sections 16 and 36 were granted to the State, and an appropriation of \$1.25 per acre was made to pay for same. Act approved March 2, 1889. (25 Stat. L., 898.)

By section 30, act approved March 3, 1891, opening the Sisseton and Wahpeton Reservation, the school sections were ceded to the State and an appropriation made, and the same were paid for at \$2.50 per acre. (26 Stat. L., 1039.)

By act of August 15, 1894, opening the Yankton Reservation, the school sections were ceded to the State and paid for at \$3.75 per acre. (28 Stat. L., 313.)

Act providing for sale of Rosebud Reservation, in Gregory County, school sections were ceded and paid for at \$2.50 per acre, and act authorizing sale of a portion of the Lower Brulé Reservation, first session of this (Fifty-ninth) Congress, school sections were ceded to the State and paid for at \$1.25 per acre.

For the purpose of showing that the bill has the approval of the Secretary of the Interior and the Commissioner of Indian Affairs, their letters are attached hereto, together with a copy of the agreement negotiated by James McLaughlin, United States Indian Inspector.

Department of the Interior.
Washington, February 14, 1907.

Sir: By your reference of the 28th ultimo, I am in receipt for report of copy of H.R. 24987, being a bill "to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect," and in reply I inclose herewith copy of a letter from the Commissioner of Indian Affairs, dated the 14th instant, stating that the report on H.R. 24987 has been pending the receipt of an agreement concluded by Inspector McLaughlin with the Indians of the Rosebud Reservation, which has now been received, and the Commissioner recommends that all that part of the bill after the words "A bill" be stricken out, and that the agreement, as concluded, together with a preamble and enacting clause, etc., be inserted in lieu thereof, which recommendation has the approval of the Department.

Very respectfully,

E.A. Hitchcock,
Secretary.

The Chairman Committee on Indian Affairs,
House of Representatives.

Department of the Interior.
 Office of Indian Affairs,
Washington, February 14, 1907.

Sir: I am in receipt by departmental reference for consideration and report of a letter from Hon. James S. Sherman, chairman of the Committee on Indian Affairs, House of Representatives, inclosing

a copy of H.R. 24987, entitled "A bill to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect," upon which he requests a report.

According to an informal understanding with Hon. Charles H. Burke, the author of the bill, report on the reference was deferred pending the receipt of the agreement concluded by James McLaughlin, United States Indian inspector, with the Indians of this reservation.

I am now in receipt by your reference of Inspector McLaughlin's report inclosing the agreement concluded by him.

I have considered H.R. 24987, and recommend that all that part of the bill after the words "A bill" be stricken out, and that the agreement as concluded, together with a preamble and enacting clause, with a second section providing for appropriations to carry the agreement into effect, be inserted in lieu thereof.

I have prepared a title for the ratification of the agreement, as follows:

"An act to ratify an agreement with the Indians residing on the Rosebud Indian Reservation, in the State of South Dakota, and to make appropriations for carrying the same into effect."

I inclose herewith a copy of this letter and of the bill H.R. 24987, amended as suggested, and respectfully recommend that, should this section meet with your approval, they be transmitted to the chairman of the Committee on Indian affairs with favorable recommendation.

Very respectfully,

F.E. Leupp,
Commissioner.

The Secretary of the Interior.

AN ACT To ratify an agreement with the Indians residing on the Rosebud Indian Reservation, in the State of South Dakota, and to make appropriations for carrying the same into effect.

Whereas James McLaughlin, United States Indian inspector, did, on the twenty-first day of January, nineteen hundred and seven, conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement made and entered into on the twenty-first day of January, nineteen hundred and seven, by and between James McLaughlin, United States Indian inspector on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

Article I. the said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration herein named and in the manner hereinafter provided, do hereby cede, grant, and relinquish to the United States all claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation lying south of Big White River and east of range twenty-five west, of the sixth principal meridian in South Dakota, except such portions thereof as have been, or may hereafter be, allotted to the Indians: *Provided*, That sections sixteen and thirty-six of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools of the State of South Dakota, and paid for by the United States at two dollars and fifty cents per acre.

Art. II. In consideration of the lands ceded and relinquished by Article I of this agreement, the United States stipulates and agrees to dispose of the same, as hereinafter provided, under the

provisions of the homestead and town-site laws, or by sale for cash, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter upon any of said lands, except as prescribed in such proclamation: *Provided*, That prior to said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot one hundred and sixty (160) acres of land to each child of Indian parentage, whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation, who is living at the date of the approval of the act ratifying this agreement and who has not heretofore received an allotment and such allotments shall be made prior to the lands being opened to settlement and entry, upon any unallotted land within said reservation, including the tract ceded by Article I of this agreement: *And provided further*, That allotments shall be made to children of the Indians, parties hereto, who have not previously received an allotment, so long as the said Indians are possessed of any unallotted reservation lands.

Art. III. It is agreed that the price of said lands entered as homesteads shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened to settlement and entry, six dollars per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall

have been opened to settlement and entry, four dollars and fifty cents per acre. After the expiration of six months and within four years after the same shall have been opened to settlement and entry, four dollars and fifty cents per acre. After the expiration of six months and within four years after the same shall have been opened to settlement and entry, the price shall be two dollars and fifty cents per acre. That the price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. That in case any entryman fails to make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his or her entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the same price that it was first entered. That the lands disposed of under the town-site law shall be paid for at the price provided by law. That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry may be, in the discretion of the Secretary of the Interior, sold to the highest bidder for cash, without regard to the above minimum limit of price.

Art. IV. It is further agreed that of the amount to be derived from the sale of said lands, as stipulated in Article III of this agreement, the sum of one million dollars (\$1,000,000) shall, from the first moneys received from the sale of these lands, be devoted to the creation of a fund of one million dollars, which shall be deposited in the United States Treasury to the credit of the

Indians, parties hereto, and which shall draw five per cent interest for a period of ten years from the date of such deposit, which interest shall be paid to the beneficiaries per capita in cash annually. That at the expiration of ten years after said fund of one million dollars shall have been deposited in the United States Treasury to the credit of the Rosebud Indians, said fund shall be equally distributed among the beneficiaries, parties hereto: *Provided*, That the proceeds derived from the sale of said lands, after the one million dollars of the ten years' interest-bearing fund and herein provided for has been created, shall be expended for the benefit of the Rosebud Indians, in the discretion of the Secretary of the Interior, upon an application by a majority petition of the Indians, parties hereto, through and upon the recommendation of the Indian agent in charge of the Rosebud Indian Reservation.

Art. V. It is further agreed that sections sixteen and thirty-six of the lands in each township of the lands hereby relinquished shall not be subject to entry, but shall be reserved for the use of the common schools of the State of South Dakota, and paid for by the United States at two dollars and fifty cents per acre, and in case any of the said sections, or parts thereof, of the land in the tract hereby relinquished are lost to the State of South Dakota by reason of allotment thereof to Indians or otherwise, the governor of said State, with the approval of the Secretary of the Interior, may locate other lands of similar character and equal value not occupied, and not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Art. VI. It is the understanding that nothing in this agreement contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent, in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being understood that the United States shall act as trustee for said Indians to dispose of said lands and to expend for said Indians and pay over to them the proceeds received from the sale thereof only as received, as herein provided.

Art. VII. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

In witness whereof the said James McLaughlin, U.S. Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at the Rosebud Agency, South Dakota, this twenty-first day of January, A.D. nineteen hundred and seven.

James McLaughlin, [seal.]
U.S. Indian Inspector.

No.	Name.	Age.	Mark.	Seal and thumb im- print.
1	Hollow Horn Bear . . .	55	Seal (x).
(And 704 others.)				

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Reservation, South Dakota; that it was fully

understood by them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Louis Bordeaux
Louis Roubideau,
Interpreters.

Rosebud Agency, South Dakota, *February 5, 1907.*

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and of the 705 Indians of the Rosebud Reservation to the foregoing agreement.

Wm. F. Schmidt,
Issue Clerk.

C.H. Bennett,
Farmer, Cut Meat District.

Ernest Falconer,
Farmer, Black Pipe District.

Frank Robinson,
Farmer, Little White River District.

O.E. Steinbaugh,
Farmer, Butte Creek District.

Teen Fenenga,
Farmer, Big White River District.

Kranth H. Cressman,
Teacher in Charge, Ponca District.

Louis Bordeaux,
Ex-Farmer, Agency District.

Rosebud Agency, South Dakota, *February 5, 1907.*

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, South Dakota, is 1,368, of whom 705 have signed the foregoing agreement.

Edward B. Kelley,
U.S. Indian Agent.

Rosebud Agency, South Dakota, February 5,
1907.

Therefore.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same is hereby, accepted, ratified, and confirmed:

Sec. 2. For the purpose of carrying this agreement into effect there is hereby appropriated and set aside in the Treasury of the United States, for payment to said Indians for lands granted to the State of South Dakota, the sum of one hundred and seventy-six thousand dollars, or so much thereof as may be necessary, which shall draw interest as provided in Article V of the agreement. And there is hereby appropriated the further sum of fifteen thousand dollars, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein.

[#22D]

(House of Representatives Conference Report
to accompany H.R. 24987)

[H.R. Rep. No. 8109, 59th Cong. 2d Sess. 1-2 (1907)]

DISPOSITION OF UNALLOTTED LANDS IN THE ROSEBUD RESERVATION, S. DAK.

February 26, 1907.—Ordered to be printed.

Mr. Sherman, from the committee of conference,
submitted the following

CONFERENCE REPORT.

[To accompany H.R. 24987.]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, having met, in full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment No. 1.

That the House recede from its disagreement to the amendment of the Senate No. 2, and agree to the same with an amendment, adding the following proviso:

Provided, That the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Rosebud Indians.

And the Senate agree to the same.

J.S. Sherman,
Chas. H. Burke,
John H. Stephens.

Managers on the part of the House.

Robert J. Gamble,
Frank B. Brandegee,
Fred T. Dubois,

Managers on the part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE.

The result of the conference is that the Senate recedes from its amendment No. 1.

The bill provides that from the proceeds derived from the sale of the land there shall be a million dollar fund deposited in the Treasury and interest shall be paid thereon for ten years. The bill of the House named the rate of interest at 3 per cent; the amendment of the Senate changed the rate from 3 to 5.

The House recedes from its disagreement to amendment No. 2 with an amendment. This amendment of the Senate provides an appropriation of \$15,000, or so much thereof as may be necessary, for the purpose of making the allotments provided by the bill. The amendment is a proviso that the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described in the bill or from any money in the Treasury belonging to said Rosebud Indians.

J.S. Sherman,
Chas. H. Burke,
John H. Stephens,

Managers on the part of the House.

[#23]

(Letters of Dec. 5, 1906 to the Secretary of the Interior and J. McLaughlin from Commissioner of Indian Affairs F. E. Leupp.)

Land. 103406, 1906.

DEPARTMENT OF THE INTERIOR OFFICE OF INDIAN AFFAIRS WASHINGTON

December 5, 1906

The Honorable,
The Secretary of the Interior.

Sir:

I have the honor to acknowledge the receipt of a letter of November 26, from the First Assistant Secretary of the Interior, referring to Office communications of June 4 and November 23, 1906, concerning the recommendation of Senator Gamble that an inspector be detailed to enter into negotiations with the Rosebud Indians for the cession of their surplus unallotted lands in Tripp County, South Dakota, and saying that Inspector McLaughlin is now at liberty to take up this work.

He therefore requests that a letter of instructions for the inspector named be prepared and submitted to the Department as early as practicable, and says that he will be detailed at once for this duty.

In accordance with his request, I have caused to be prepared and transmit herewith for your consideration

and approval a draft of instructions for the guidance of the inspector in conducting the proposed negotiations.

Very respectfully,

/s/F. E. Leupp
F. E. Leupp
Commissioner.

JHH-McC.

Land. 03406, 1906.

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

December 5, 1906

James McLaughlin, Esq.,
United States Indian Inspector,

Sir:

The Office is in receipt of a letter of November 26, 1906, from the First Assistant Secretary of the Interior, referring to Office communications of June 4 and November 23, 1906, concerning the recommendation of Senator Gamble that an inspector be detailed to enter into negotiations with the Rosebud Indians for the cession of the surplus unallotted land in Tripp County, South Dakota, and say that you are now at liberty to take up this work.

He therefore requests the Office to prepare and submit to the Department, as early as practicable, a letter of instructions for your guidance in conducting

the proposed negotiations, saying that you will be at once detailed for this duty.

The lands referred to are embraced in townships 95 to 100 north, both inclusive, ranges 74 to 78 west, both inclusive; fractional townships 95 to 100 north, range 79 west; township 101 north, ranges 74 to 78 west, both inclusive; township 102 north, ranges 74, 75, 77, and 78 west; fractional townships 101 and 102 north, range 79 west; township 102 north, range 76 west, south of White River; township 103 north, ranges 74 to 78 west, both inclusive, south of White River; fractional township 103 north, range 79 west, south of White River; township 104 north, range 74 west, south of White River, all of the Fifth Principal Meridian.

That part of townships 101 and 102 north, range 73 west, and townships 103 and 104 north, range 73 west, said meridian, south of White River in said reservation, which is in Lyman County, should also be considered in connection with the foregoing description of lands. The strip of land described lies east of the north part of Tripp County, as laid down on the map of the General Land Office issued in 1901, copy of which is enclosed for convenient reference. The Annual Report of this Office for 1905 shows the unallotted lands of the reservation to be 1,616,407 acres. The lands above described embrace according to approximate estimate 1,094,000 acres, of which there has been allotted about 187,000 acres, leaving a surplus of some 907,000 acres.

You are familiar with the situation there and for this reason it is not deemed necessary to give instructions in detail for conducting the negotiations. If, however, any agreement is concluded with the Indians, the Department feels that the disposal to be made of the proceeds arising from the cession is a subject requiring most careful and earnest consideration on your part. From

ample experience, it is convinced that annuities and the issuance of rations for any extended period of years to Indians are very detrimental to their welfare. Idleness and lack of selfdependence are fostered by the ration and annuity system, and it is believed that it is one of the great drawbacks to the progress of the Indian tribes toward civilization. Any provision, therefore, in the agreement with the Rosebuds which would enable them to live without putting forth at least as great efforts as at present to gain a livelihood would be regarded necessarily as a step backward.

Their special needs should therefore be inquired into. Their agent should be consulted also. A plan for the disposal of the proceeds should be formulated that will tend to promote the welfare of the Indians and start them on the road to civilization and self-support. If stock cattle are needed, provision should be made for their purchase with a part of the funds to be derived from the cession. The question of irrigation also should receive consideration; and if irrigation of the diminished reservation or allotted lands is found to be practicable, provision therefore should be made.

The educational needs of the Indians should receive attention, and if any additional facilities are required these should be provided for. The question of the construction of houses and the purchase of additional farm implements, wagons, harness, etc., should be looked into and if these are needed provision therefore should be made. But the agreement should not provide for the payment of any large sum or sums to the Indians in cash, if it be possible to obtain their consent without it.

The Office is in receipt of a communication of November 22 from Hon. Charles H. Burke, wherein he says that he recently visited the Rosebud Reservation

for the purpose of gaining information with a view to preparing a bill for the sale of that part of the reservation located in Tripp County; that he found that a large number of Indians had taken allotments in the western and southwestern parts of the reserve, on lands which are now, and always will be, worthless, being nothing but sandhills; that the Indians who have allotments in the reservation elsewhere than in Tripp County should be permitted, in the discretion of the Secretary of the Interior, to relinquish them and to take allotments in lieu thereof in some other part of the reservation, including Tripp County; and that on consultation with the Indians he learned that they believed that children now living or born since the allotments were made on the reservation should each be given allotments of 160 acres of land. It is suggested that you give these two matters consideration in connection with the proposed negotiations.

The land ceded should be disposed of under the general provisions of the homestead and townsite laws of the United States. The price of the said land entered as homesteads should receive careful consideration. The following would seem to be fair terms, similar to those in the disposal of the ceded lands in Gregory County, S.D.:

On all lands entered or filed upon within three months after they shall have been opened for settlement and entry, five dollars per acre, and on all lands entered or filed upon after the expiration of three months and within six months after they shall have been opened for settlement and entry, four dollars per acre; after the expiration of six months from the time when they shall have been opened for settlement and entry the price should be two dollars and fifty cents per acre. The lands should be paid for in accordance

with rules and regulations to be prescribed by the Secretary on these terms: one-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. All lands remaining undisposed of at the expiration of four years from the date of opening them to entry should be sold to the highest bidder for cash, at not less than two dollars and fifty cents per acre, under rules and regulations to be prescribed by the Secretary, and any lands remaining unsold for seven years after they shall have been opened to entry should be sold to the highest bidder for cash, without regard to said minimum limit of price.

It is suggested that the agreement provide that the Indians shall have the benefit of whatever can be realized from the sale of lands for townsite purposes, and should authorize the Secretary of the Interior to reserve from the ceded lands such tracts for these purposes as in his opinion may be required for the future public interests, and to cause them to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe, in accordance with Section 2381 of the Revised Statutes, the net proceeds derived from the sale of such lands to be credited to the Indians as agreed upon.

It is thought that it should contain an article providing that the unallotted and unreserved lands, if any, in sections 16 and 36 in the cession should be reserved for the use of the common schools of the said State, and paid for by the United States at the rate of two dollars and fifty cents per acre.

As above indicated, the proposal for the cession of the surplus lands in question did not come from the Indian themselves. No undue pressure should be

brought to bear upon them to enter into an agreement. If after assembling them in council and fully explaining to them the purpose thereof, they should refuse to cede the lands referred to, you should report that fact to the Department. If, however, an agreement is concluded, it should be executed in proper form for acceptance and ratification by Congress, and should contain a provision to the effect that it must be so ratified in order to make it valid.

In this connection attention is invited to Article 12 of the Sioux treaty of April 29, 1868 (15 Stat. L., 635), which provides that no treaty for the cession of lands with said Indians shall be valid unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested therein. Should the signatures of three-fourths of the adult male Indians be procured, a certificate by the United States Indian Agent should be attached, giving the total number of Indians of the reservation entitled to sign, and showing that those who have signed constitute at least three-fourths of the said Indians. Their signature should be followed by their respective thumb prints.

I am informally advised that the Indians who have discussed with outsiders the project for opening Tripp County have indicated their intention of opposing it unless they can force the Government into reversing its rule under which the money of the minor children is returned to the United States Treasury to await the coming of age of the beneficiaries. If any such argument is raised in the councils you hold with the Indians, I wish that you would meet it by explaining that the Department has acted in this matter with the Indians only as the courts all over the United States act with white people in practically parallel situations. The money in questions belongs to the children and not to

their parents, and the courts everywhere inquire into the capacity of the parents, their moral characters, etc., before even allowing them to become bonded guardians and take the custody of their children's money. A parent who is ignorant, frivolous, unindustrious, imprudent in matters affecting property, intemperate, otherwise vicious, or even weak, is not permitted to handle freely the money of his children. It would be impracticable obviously for the average Indian of the Rosebud Reservation to obtain a satisfactory bond if he were to apply for the legal guardianship of his child with the right to take charge of the child's money. Moreover, any Indian appointed guardian would be put upon the same footing as any white bonded guardian in respect to being required from time to time to furnish the court with an accounting showing where every dollar of the child's money had gone, and with liability to punishment, if it had been recklessly wasted, and here again the uneducated Indian would probably fall short.

The Department has, however, been a little more considerate of those Indians who are worthy of consideration than the courts would have been. I have caused to be prepared, from the best information obtainable from trustworthy sources, a list of the Indians of the Rosebud Reservation who are temperate, prudent, honest and otherwise fitted to take charge of and spend judiciously the money of their children for these children's own benefit. This list I have denominated a Roll of Honor, and to the persons whose names are on it the Agent has been instructed to pay the Gregory County land money of their children. The formation of the Roll of Honor has been explained to the Indians, and all have been given to understand that Indians not on the Roll who are ambitious to be included in it, can have such ambition gratified only by

fitting themselves for inclusion on the same lines on which those now on the Roll have approved themselves as worthy to be there; and also that any Indian now on the Roll is liable to have his name expunged from it by departing from the path of rectitude as marked out by the Department. I trust that you will emphasize these points particularly in any discussion of this phase of the matter which may come up in council, so as to impress more than ever upon the Indians that the purpose underlying the retention of the minors' money is purely benevolent, and adopted in the interest of justice to the children who have a right to demand such treatment from the Department as trustee of their welfare.

It is but right to the Indians also that you should explain to them with great particularity that the law as defined by the Supreme Court of the United States, our highest and final tribunal, vests in Congress the right to open their lands without their consent; that the desire of the Department in sending you to talk the matter over with the Indians is to obtain from them their views of the terms on which the opening ought to be made; and that it will doubtless be to their advantage to enter into an agreement containing such reasonable provisions as they think would be most beneficial to them as a tribe.

The minutes of all the council proceedings should accompany the report to the Department of your actions under these instructions, whether an agreement is executed or not. Word will be sent to the Indian Agent to cooperate with and assist you as far as he is able in conducting the proposed negotiations. Should any further information seem to you important, you

should advise the Department promptly and request the necessary instructions.

Very respectfully,

/s/F. E. Leupp
F. E. Leupp
Commissioner.

APPROVED: —

J.H.H.—McC.
E.

Secretary.

[#24]

(Legislative history of H.R. 20527—a bill for the sale of surplus lands in the Rosebud Reservation.)

[41 Cong. Rec. 241 (1906-1907)]

Rosebud Reservation: bills for sale of surplus lands in (see bills S. 6618; H. R. 20527, 24987, 25608).

[41 Cong. Rec. 38 (1906-1907)]

H.R. 20527—

To authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Burke of South Dakota; Committee on Indian Affairs 15.

[41 Cong. Rec. 15 (1906)]

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS
INTRODUCED.

* * *

By Mr. BURKE of South Dakota: A bill (H.R. 20527) to authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation, in the State of South Dakota; and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[#25]

(Letter of Dec. 19, 1906 to the Secretary of the Interior from Commissioner F. E. Leupp.)

Land 108997-1906.

**DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON**

December 19, 1906

The Honorable,
The Secretary of the Interior.

Sir:

I have the honor to acknowledge the receipt, by Department reference for consideration and report, of H. R. 20527, 59th Congress, 2nd Session, "To authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect." The bill was referred to you by the Chairman of the House Committee on Indian Affairs, with a request for a report thereon for the use of the committee.

In reporting on the bill I have the honor to say that at the request of the First Assistant Secretary of the Interior, I caused to be prepared and submitted to you on the 5th instant, for your consideration and approval, a letter of instructions for the guidance of Inspector McLaughlin in conducting negotiations with the Rose-

Supreme Court, U. S.

FILED

AUG 9 1976

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPENDIX
[Volume III – Pages 945-1412]

PETITION FOR CERTIORARI FILED OCTOBER 11, 1975
CERTIORARI GRANTED MAY 24, 1976

(i)

TABLE OF CONTENTS

Page

Docket Entries	1
Amended Complaint	3
Answer of Defendant Counties of Mellette, Lyman, Tripp, and Gregory (10/10/72)	9
Answer of Defendants, Honorable Richard Kneip and Gordon Mydland (10/16/72)	12
Order Adding Parties Defendant (1/11/73)	27
Answer of Defendant United States (3/21/73)	28
Notice of Appeal (3/13/74)	30
Stay of Mandate (8/25/75)	32

Entry

#1	H.R. 4740 56th Cong. 1st Sess. (1899)	33
#1A	33 Cong. Rec. 380 (1899)	40
	33 Cong. Rec. 291	40
	33 Cong. Rec. 594	40
	33 Cong. Rec. 2521	40
#1B	H.R. Rep. No. 486, 56th Cong. 1st Sess. (1900) ..	42
#2	33 Cong. Rec. 380 (1899)	47
	33 Cong. Rec. 54	47
	33 Cong. Rec. 561	47
#3	34 Cong. Rec. 152 (1901)	48
	34 Cong. Rec. 3556	48
#4	March 19, 1901 letters to Sec. of Interior and Indian Inspector McLaughlin from W. A. Jones Commissioner of Indian Affairs	51
#5	35 Cong. Rec. 377 (1901-1902)	59
	35 Cong. Rec. 81	59
	35 Cong. Rec. 751	60
	35 Cong. Rec. 2477	60

(ii)

Entry	Page
35 Cong. Rec. 2717	60
35 Cong. Rec. 2882	61
35 Cong. Rec. 3187-3188	61
35 Cong. Rec. 3450	71
35 Cong. Rec. 3541	71
35 Cong. Rec. 3556-3557	72
35 Cong. Rec. 4424-4425	72
35 Cong. Rec. 4569	73
35 Cong. Rec. 4608	74
35 Cong. Rec. 4715	75
35 Cong. Rec. 4750	75
35 Cong. Rec. 4800-4807	76
35 Cong. Rec. 4855-4862	112
35 Cong. Rec. 4911-4918	152
35 Cong. Rec. 4963-4971	195
35 Cong. Rec. 5013	236
35 Cong. Rec. 5019-5024	237
35 Cong. Rec. 5198	273
35 Cong. Rec. 5613-5614	273
#5A S. Rep. No. 662, 57th Cong. 1st Sess. 1-6 (1902) ..	274
#5B H.R. Rep. No. 2099, 57th Cong. 1st Sess. 1-4 (1902)	289
#6 35 Cong. Rec. 377 (1901-1902)	299
35 Cong. Rec. 412	299
35 Cong. Rec. 680	299
35 Cong. Rec. 2814	300
#6A H. R. Rep. No. 954, 57th Cong. 1st Sess. 1-4 (1902)	301
#7 35 Cong. Rec. 377 (1901-1902)	310
35 Cong. Rec. 245	310
35 Cong. Rec. 206	310
35 Cong. Rec. 1279	311
#7A S. Doc. No. 31, 57th Cong. 1st Sess. 1-43 (1901) ..	312
#8 35 Cong. Rec. 377 (1901-1902)	410
35 Cong. Rec. 747	410

(iii)

Entry	Page
#9 35 Cong. Rec. 377 (1901-1902)	413
35 Cong. Rec. 4706	413
#9A S. Doc. 324, 57th Cong. 1st Sess. 1-7 (1902)	414
#10 36 Cong. Rec. 148 (1902-1903)	430
36 Cong. Rec. 141	430
36 Cong. Rec. 2409	430
36 Cong. Rec. 2473	431
#10A H.R. Rep. No. 3839, 57th Cong. 2d Sess. 1-5 (1903)	432
#11 36 Cong. Rec. 148 (1902-1903)	443
36 Cong. Rec. 51	443
36 Cong. Rec. 2434	444
36 Cong. Rec. 2498	444
36 Cong. Rec. 2502	444
36 Cong. Rec. 2747-2748	445
36 Cong. Rec. 3074	449
#11A S. Rep. No. 3271, 57th Cong. 2d Sess. 1-5 (1903) .	450
#12 Letter of June 30, 1903 from Commissioner of Indian Affairs Jones to Indian Inspector McLaughlin	461
#13 Minutes of Council, July 24, 1903 to Aug. 10, 1903	467
#13A Excerpt from Report of the Commissioner of In- dian Affairs 1901. Letter dated Aug. 15, 1901 from the Supt. to the CIA	523
#14 36 Cong. Rec. 148 (1902-1903)	525
36 Cong. Rec. 1559	525
36 Cong. Rec. 626	527
#14A Excerpt from letter dated Aug. 31, 1903 from Inspector James McLaughlin to the Sec. of the Interior (N.A. Group 48, Records of the Office of the Sec. of the Int., Ind. Div.) ...	528

(iv)

<u>Entry</u>	<u>Page</u>
#14B Excerpts from Report of the Commissioner of Ind. Affairs, 1903	530
#15 Act of April 23, 1904 ch. 1484, 33 Stat. 254 . . .	531
#15A 38 Cong. Rec. 268 (1904)	541
38 Cong. Rec. 275	541
38 Cong. Rec. 902-903	541
38 Cong. Rec. 1010	542
38 Cong. Rec. 1292-1293	542
38 Cong. Rec. 1421-1429	543
38 Cong. Rec. 1467	592
38 Cong. Rec. 1468	592
38 Cong. Rec. 1469	592
38 Cong. Rec. 1601	593
38 Cong. Rec. 4984-4988	593
38 Cong. Rec. 5155	626
38 Cong. Rec. 5214	627
38 Cong. Rec. 5218	627
38 Cong. Rec. 5287	628
38 Cong. Rec. 5447	628
#15B H.R. Rep. No. 443, 58th Cong. 2d Sess. 1-19 (1904)	629
#15C S. Rep. No. 651, 58th Cong. 2d Sess. 1-12 (1904) .	678
#15D S. Doc. No. 158, 58th Cong. 2d Sess. 1-7 (1904) .	709
#16 38 Cong. Rec. 268 (1904)	724
38 Cong. Rec. 71	724
38 Cong. Rec. 1100	724
38 Cong. Rec. 1877	725
#17 38 Cong. Rec. 2827-2832 (1904)	726
#18 History of the Chicago & North Western Railway System	762
#19 Act of Feb. 7, 1905 ch. 545, 33 Stat. 700	763
#20 41 Cong. Rec. 241 (1906-1907)	765
41 Cong. Rec. 286	765
41 Cong. Rec. 2800	765

(v)

<u>Entry</u>	<u>Page</u>
#21 Minutes of Council from Dec. 14 to Dec. 20, 1906 & Jan. 17 to Jan. 21, 1907	766
#21A Excerpt from letter dated Feb. 12, 1907 from Inspector McLaughlin to the Sec. of the Interior (N.A. Group 75, BIA letters received, 1881-1907, 17945 Land (1907)	868a
#22 Act of March 2, 1907 ch. 2536, 34 Stat. 1230 . . .	869
#22A 41 Cong. Rec. 241 (1906-1907)	875
41 Cong. Rec. 268	875
41 Cong. Rec. 1782	876
41 Cong. Rec. 3004	876
41 Cong. Rec. 3103-3105	877
41 Cong. Rec. 3182-3183	888
41 Cong. Rec. 3264	892
41 Cong. Rec. 3323	892
41 Cong. Rec. 3552	893
41 Cong. Rec. 3996	894
41 Cong. Rec. 4120-4121	895
41 Cong. Rec. 4312	897
41 Cong. Rec. 4316	898
41 Cong. Rec. 4402	898
41 Cong. Rec. 4630	898
#22B H.R. Rep. No. 7613, 59th Cong. 2d Sess. 1-8 (1907)	899
#22C S. Rep. No. 6838, 59th Cong. 2d Sess. 1-7 (1907) .	915
#22D H.R. Rep. No. 8109, 59th Cong. 2d Sess. 1-2 (1907)	931
#23 Letters of Dec. 5, 1906 to the Sec. of Int. & J. McLaughlin from the Commissioner of Indian Affairs, F. E. Leupp.	933
#24 41 Cong. Rec. 241 (1906-1907)	943
41 Cong. Rec. 38	943
41 Cong. Rec. 15	943

(vi)

<u>Entry</u>	<u>Page</u>
#25 Letter of Dec. 19, 1906 to Sec. of Interior from Comm. Leupp	944
#26 41 Cong. Rec. 24 (1906-1907)	949
41 Cong. Rec. 27	949
41 Cong. Rec. 50-51	949
41 Cong. Rec. 3207	950
41 Cong. Rec. 3323	950
41 Cong. Rec. 4105	951
#26A S. Rep. No. 6831, 59th Cong. 2d Sess. 1-5 (1907) ..	952
#27 Letter of Dec. 15, 1906 to the Sec. of Int. from Commissioner Leupp	962
#28 41 Cong. Rec. 241 (1906-1907)	973
41 Cong. Rec. 3858-3861	973
#29 42 Cong. Rec. 494, (1907-1908)	983
42 Cong. Rec. 174	983
42 Cong. Rec. 3777	983
42 Cong. Rec. 4211	984
42 Cong. Rec. 4404-4405	984
42 Cong. Rec. 4482	988
#29A S. Rep. No. 440, 60th Cong. 1st Sess. 1-2 (1908) ..	989
#30 43 Cong. Rec. 228 (1908-1909)	992
43 Cong. Rec. 27	992
43 Cong. Rec. 65	992
43 Cong. Rec. 1559	992
43 Cong. Rec. 1679	993
#30A S. Rep. No. 887, 60th Cong. 2d Sess. 1-4 (1909) ..	995
#31 Letter of Feb. 10, 1909 to Senator Clapp from the Sec. of Interior	1002
#32 44 Cong. Rec. 268 (1909)	1007
44 Cong. Rec. 5	1007
44 Cong. Rec. 132	1007

(vii)

<u>Entry</u>	<u>Page</u>
#33 44 Cong. Rec. 268 (1909)	1008
44 Cong. Rec. 315	1008
44 Cong. Rec. 2013	1008
#34 Excerpt from letter dated April 2, 1909 from the first Asst. Sec. of the Int. to Inspector Mc- Laughlin (N.A. Group 75, BIA, Central File 1907-39, File 24400-09-3081, Pine Ridge) ...	1009
#34A Minutes of Council of Mar. 11, 1909 and April 21, 1909	1011
#35 Act of May 30, 1910 ch. 260, 36 Stat. 448	1044
#35A 45 Cong. Rec. 295 (1909-1910)	1052
45 Cong. Rec. 2	1052
45 Cong. Rec. 668	1053
45 Cong. Rec. 905	1053
45 Cong. Rec. 958	1053
45 Cong. Rec. 1012-1013	1054
45 Cong. Rec. 1065-1071	1055
45 Cong. Rec. 1073-1075	1091
45 Cong. Rec. 1215	1103
45 Cong. Rec. 1752	1104
45 Cong. Rec. 5456-5473	1104
45 Cong. Rec. 5483	1203
45 Cong. Rec. 5538	1204
45 Cong. Rec. 6324-6326	1205
45 Cong. Rec. 6379-6381	1213
45 Cong. Rec. 6415-6416	1223
45 Cong. Rec. 6436-6437	1225
45 Cong. Rec. 6496	1233
45 Cong. Rec. 6517	1234
45 Cong. Rec. 7128-7129	1234
#35B S. Rep. No. 68, 61st Cong. 2d Sess. 1-5 (1910) ...	1235
#35C H.R. Rep. No. 429, 61st Cong. 2d Sess. 1-5 (1910) .	1246
#35D H.R. Rep. No. 1368, 61st Cong. 2d Sess. 1-5 (1910) .	1257

(viii)

Entry	Page
#36 Letter of Feb. 25, 1910 to President Taft from Rosebud Indian Tribal Council	1266
#37 45 Cong. Rec. 295 (1909-1910)	1267
45 Cong. Rec. 147	1267
45 Cong. Rec. 10	1267
45 Cong. Rec. 1135	1268
45 Cong. Rec. 5476	1268
#37A H.R. Rep. No. 332, 61st Cong. 2d Sess. 1-5 (1910) ..	1270
#38 Letter of Jan 13, 1910 to Congressman Burke from the Sec. of the Interior	1280
#39 46 Cong. Rec. 147 (1910-1911)	1283
46 Cong. Rec. 14	1283
46 Cong. Rec. 55	1283
#40 Letter of Nov. 12, 1910 to Mr. Schofield from the 2d Asst. Commissioner of Indian Affairs	1284
#41 Series of letters between Mr. Derig & the 2d Asst. Commissioner of Ind. Affairs	1286
#42 Minutes of Council of Nov. 1, 1911	1290
#43 Act of Aug. 17, 1911 ch. 22, 37 Stat. 21	1300
#44 49 Cong. Rec. 109 (1913)	1302
49 Cong. Rec. 3	1302
49 Cong. Rec. 2209	1302
49 Cong. Rec. 4210	1303
#44A S. Rep. No. 1166, 62d Cong. 3d Sess. 1-5 (1913) ..	1307
#45 Letter to Senator Gamble from Sec. of Interior	1318
#45A Letter dated April 26, 1913 from Supt. Rosebud Indian Agency to CIA	1320
#45B Excerpts from letter dated Sept. 18, 1913 from the Supt. Rosebud Ind. Agency to the CIA	1324
#46 49 Cong. Rec. 109 (1913)	1326
49 Cong. Rec. 60	1326
49 Cong. Rec. 2525	1326

(ix)

Entry	Page
#47 49 Cong. Rec. 109 (1913)	1327
49 Cong. Rec. 64	1327
49 Cong. Rec. 3305	1327
#48 Petitions in opposition to H.R. 28606	1328
#49 Letter of Dec. 9, 1915 to Sec. of Int. from Comm. of Ind. Affairs	1356
#50 Series of 1915 letters between G. Van Meter and Dept. of Interior	1361
#51 Act of March 3, 1919, Public No. 338, 40 Stat. 1320	1373
56 Cong. Rec. 9490	1373
57 Cong. Rec. 1838-1839	1374
57 Cong. Rec. 4784	1376
#51A H.R. Rep. No. 742, 65th Cong. 2d Sess. 1-2 (1918) .	1377
#51B S. Rep. No. 745, 65th Cong. 3d Sess. 1-2 (1919) ..	1386
#52 Excerpt from the report of the General Accounting Office filed July 12, 1934 in the Court of Claims Docket No. C-531	1393
#53 Excerpts from the Constitution of the Rosebud Sioux Tribe	1394
#54 Memorandum dated April 6, 1972 from the Field Solicitor, Aberdeen, S.D. to the Area Direc- tor, Aberdeen, BIA	1398
#55 Letter dated August 23, 1974 from the Acting Area Director, Aberdeen, S.D. BIA to Neil Proto, Esquire, Department of Justice	1405
#56 Excerpts from instruments from National Archives Record Group N.75, Central Files, 1907-1921, Bureau of Indian Affairs	1409

bud Indians for the cession of their surplus unallotted lands in Tripp County, South Dakota, which I am informally advised has been approved and transmitted to him.

The provisions of the bill under consideration conform mainly to the suggestions in the approved instructions to the Inspector, but fails to make provision for the sale and disposal of a strip of land in Lyman County, lying east of the north part of Tripp County as laid down on the map issued by the General Land Office in 1901, and being part of townships 101, 102, 103, and 104 north, range 73 west of the 5th principal meridian, south of White River, which strip should be disposed of with the lands in Tripp County. I respectfully suggest, therefore, that several amendments be made to the bill; to wit:

1. By inserting between the word "within" and the word "the" in line 6, page one, the words "the strip in Lyman County and"; also between the word "County" and the syllable "ex" in line 6, said page, the words "as laid down on the map issued by the General Land Office in nineteen hundred and one."

2. By inserting between the word "reservation" and the word "and" in line 14, page 2, the words "including said strip and county".

3. By inserting between the word "is" and the letter "a" in line 16, page 2, the words "or was in case of death".

4. By inserting between the word "Tripp" and the word "are" in line 21, page 5, the words "and said strip"; also by inserting between the word "County" and the word "to" in line 24, page 5, the words "and said strip".

I respectfully recommend that the amendments proposed be laid before the Chairman of the House

Committee on Indian Affairs for the consideration of the Committee, if they meet with your approval.

It is suggested that his special attention be invited to the fact that Inspector McLaughlin is now in the field with instructions to negotiate with the Rosebud Indians for the cession of their surplus unallotted lands in Tripp County and the strip above described; that a report is expected from him in a reasonable time, and that when received it will be laid before the Senate and House Committees on Indian Affairs for their consideration, accompanied by such recommendations as may seem proper in the premises.

It should be said in this connection that I reported on the 15th instant on S. 6618, 59th Congress, 2nd Session, to authorize the sale of a part of Rosebud Indian Reservation in South Dakota, and for other purposes, and suggested amendments thereto conforming as far as possible to the suggestions contained in the approved instructions to Inspector McLaughlin.

I said that, in my judgment, it was a mistake for Congress to direct the restoration of the surplus lands of an Indian reservation to the public domain without first referring the question to the Indians; that they were apt to become dissatisfied and resentful, and that this greatly retarded the Government's efforts for their advancement. I also suggested that if action on Senate bill 6618 could be postponed until the receipt of the Inspector's report, it might simplify matters to some extent. I now make a similar suggestion respecting the bill under consideration.

The letter of the Chairman and the bill are returned herewith. A copy of this report is enclosed.

Very respectfully,

/s/F. E. Leupp
F. E. Leupp
Commissioner.

JHH.Ph.

DEPARTMENT OF THE INTERIOR
WASHINGTON

December 27th, 1906

The Chairman of the
Committee on Indian Affairs,
House of Representatives.

Sir:

I am in receipt of your letter of the 11th instant, enclosing copy of H. R. 20527, being a bill "To authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation, in the State of South Dakota and making appropriation and provision to carry the same into effect", and requesting to be furnished with a report for the use of your Committee.

In reply I enclose herewith a copy of a letter from the Commissioner of Indian Affairs dated the 19th instant, stating that on the 5th instant he prepared a letter of instructions for the guidance of Inspector McLaughlin in conducting negotiations with the Rosebud Indians for the cession of their surplus unallotted lands in Tripp County, S. D.; that the provisions of the bill under consideration conform mainly to the sugges-

tions in the approved instructions to the Inspector and suggesting several amendments to the bill submitted and recommending that these amendments be laid before your Committee for consideration.

The Commissioner in his letter makes other suggestions and recommendations, all of which have my approval.

Very respectfully,

/s/E. A. Hitchcock

Secretary.

12006, Ind. Div. 1906;
12264, Ind. Div. 1906
(1 enclosure.)
C.D.—w.o.

[#26]

(Legislative history of S. 6618—a bill for sale of surplus lands in the Rosebud Reservation.)

[41 Cong. Rec. 24 (1906-1907)]

Rosebud Reservation: bills for sale of surplus lands in (see bills S. 6618; H. R. 20527, 24987, 25608).

[41 Cong. Rec. 27 (1906-1907)]

S. 6618—

To authorize the sale of a portion of the Rosebud Indian Reservation in South Dakota, and for other purposes.

Mr. Gamble: Committee on Indian Affairs 50.—Reported back with amendment (S. Report 6831) 3207.—Passed over 3323.—Indefinitely postponed (see H. R. 24987) 4105.

[41 Cong. Rec. 50-51 (1906)]

Mr. GAMBLE introduced a bill (S. 6618) to authorize the sale of a portion of the Rosebud Indian Reservation in South Dakota, and for other purposes; which was read twice by its title, and referred to the Committee on Indian Affairs.

[41 Cong. Rec. 3207 (1907)]

ROSEBUD INDIAN RESERVATION LANDS.

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (S. 6618) to authorize the sale of a portion of the Rosebud Indian Reservation, in South Dakota, and for other purposes, reported it with an amendment, and submitted a report thereon.

[41 Cong. Rec. 3323 (1907)]

ROSEBUD INDIAN RESERVATION, S. DAK.

The bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Indian Affairs with an amendment, to insert at the end of section 7 the following:

And there is hereby appropriated the further sum of \$15,000, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

[41 Cong. Rec. 4105 (1907)]

ROSEBUD INDIAN RESERVATION.

The bill (S. 6618) to authorize the sale of a portion of the Rosebud Indian Reservation in South Dakota, and for other purposes, was announced as next in order.

Mr. GAMBLE. A similar bill has passed both Houses, and I move the indefinite postponement of this bill.

The motion was agreed to.

[#26A]

(Senate report to accompany S. 6618)

[S. Rep. No. 6831, 59th Cong. 2d Sess. 1-5, 1907]

SALE AND DISPOSITION OF CERTAIN
LANDS IN ROSEBUD INDIAN RESERVATION
IN SOUTH DAKOTA.

February 18, 1907.—Ordered to be printed.

Mr. Gamble, from the Committee on Indian Affairs,
submitted the following

REPORT.

[To accompany S. 6618.]

The Committee on Indian Affairs, to whom was referred the bill (S. 6618) to authorize the sale of a portion of the Rosebud Indian Reservation in South Dakota, and for other purposes, having had the same under consideration, submit the following report:

Your committee respectfully submits the following as a substitute for S. 6618, and recommends that the same do pass:

AN ACT To ratify an agreement with the Indians residing on the Rosebud Indian Reservation, in the State of South Dakota, and to make appropriations for carrying the same into effect.

Whereas James McLaughlin, United States Indian inspector, did, on the twenty-first day of January,

nineteen hundred and seven, conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement, made and entered into on the twenty-first day of January, nineteen hundred and seven, by and between James McLaughlin, United States Indian inspector on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

Article 1. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration herein named and in the manner hereinafter provided, do hereby cede, grant, and relinquish to the United States all claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation lying south of Big White River and east of range twenty-five west, of the sixth principal meridian in South Dakota, except such portions thereof as have been, or may hereafter be, allotted to Indians: *Provided*, That sections sixteen and thirty-six of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools of the State of South Dakota, and paid for by the United States at two dollars and fifty cents per acre.

Art. II. In consideration of the lands ceded and relinquished by Article I of this agreement, the United States stipulates and agrees to dispose of the same, as hereinafter provided, under the provisions of the homestead and townsite laws, or by sale for cash, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to

settle upon, occupy, or enter upon any of said lands, except as prescribed in such proclamation: *Provided*, That prior to said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot one hundred and sixty (160) acres of land to each child of Indian parentage, whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation, who is living at the date of the approval of the act ratifying this agreement and who has not heretofore received an allotment, and such allotments shall be made prior to the lands being opened to settlement and entry, upon any unallotted land within said reservation, including the tract ceded by Article I of this agreement: *And provided further*, That allotments shall be made to children of the Indians, parties hereto, who have not previously received an allotment, so long as the said Indians are possessed of any unallotted reservation lands.

Art. III. It is agreed that the price of said lands entered as homesteads shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened to settlement and entry, six dollars per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall have been opened to settlement and entry, four dollars and fifty cents per acre. After the expiration of six months and within four years after the same shall have been opened to settlement and entry, the price shall be two dollars and fifty cents per acre. That the price shall be paid in accordance with rules and regulations to be prescribed

by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. That in case any entryman fails to make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his or her entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the same price that it was first entered. That the lands disposed of under the town-site law shall be paid for at the price provided by law. That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry may be, in the discretion of the Secretary of the Interior, sold to the highest bidder for cash, without regard to the above minimum limit of price.

Art. IV. It is further agreed that of the amount to be derived from the sale of said lands, as stipulated in Article III of this agreement, the sum of one million dollars (\$1,000,000) shall, from the first moneys received from the sale of these lands, be devoted to the creation of a fund of one million dollars, which shall be deposited in the United States Treasury to the credit of the Indians, parties hereto, and which shall draw five per cent interest for a period of ten years from the date of such deposit, which interest shall be paid to the beneficiaries per capita in cash annually. That at the expiration of ten years after said fund of one million dollars shall have been deposited in the United States Treasury to the credit of the Rosebud Indians, said fund shall be equally distributed among the beneficiaries, parties hereto: *Provided*, That the proceeds

derived from the sale of said lands, after the one million dollars of the ten years' interest-bearing fund herein provided for has been created, shall be expended for the benefit of the Rosebud Indians, in the discretion of the Secretary of the Interior, upon an application by a majority petition of the Indians, parties hereto, through and upon the recommendation of the Indian agent in charge of the Rosebud Indian Reservation.

Art. V. It is further agreed that sections sixteen and thirty-six of the lands in each township of the lands hereby relinquished shall not be subject to entry, but shall be reserved for the use of the common schools of the State of South Dakota, and paid for by the United States at two dollars and fifty cents per acre, and in case any of the said sections, or parts thereof, of the land in the tract hereby relinquished are lost to the State of South Dakota by reason of allotment thereof to Indians or otherwise the governor of said State, with the approval of the Secretary of the Interior, may locate other lands of similar character and equal value not occupied, and not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Art VI. It is the understanding that nothing in this agreement contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent, in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being understood that the United States shall act as trustee for said Indians to dispose of said lands and to

expend for said Indians and pay over to them the proceeds received from the sale thereof only as received, as herein provided.

Art. VII. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

In witness whereof the said James McLaughlin, U.S. Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at the Rosebud Agency, South Dakota, this twenty-first day of January, A. D. nineteen hundred and seven.

James McLaughlin, [seal.]
U.S. Indian Inspector.

No.	Name	Age.	Seal and Mark thumb im- print.
1	Hollow Horn Bear	55	. . . Seal (x).
	(and 704 others.)		

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Reservation, South Dakota; that it was fully understood by them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Louis Bordeaux,
Louis Roubideau,
Interpreters.

Rosebud Agency, South Dakota, *February 5, 1907.*

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and of the 705 Indians of the Rosebud Reservation to the foregoing agreement.

Wm. F. Schmidt,
Issue Clerk.
C. H. Bennett,
Farmer, Cut Meat District.
Ernest Falconer,
Farmer, Black Pipe District.
Frank Robinson,
Farmer, Little White River District.
O. E. Steinbaugh,
Farmer, Butte Creek District.
Teen Fenenga,
Farmer, Big White River District.
Kranth H. Cressman,
Teacher in Charge, Ponca District.
Louis Bordeaux,
Ex-Farmer, Agency District.

Rosebud Agency, South Dakota, *February 5, 1907.*

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, South Dakota, is 1,368, of whom 705 have signed the foregoing agreement.

Edward B. Kelley,
U.S. Indian Agent.

Rosebud Agency, South Dakota, *February 5, 1907.*

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same is hereby, accepted, ratified, and confirmed.

Sec. 2. For the purpose of carrying this agreement into effect there is hereby appropriated and set aside in the Treasury of the United States, for payment to said Indians for lands granted to the State of South Dakota, the sum of one hundred and seventy-six thousand dollars, or so much thereof as may be necessary, which shall draw interest as provided in Article V of the agreement. And there is hereby appropriated the further sum of fifteen thousand dollars, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein.

Since the introduction of S. 6618 the foregoing agreement was entered into by James McLaughlin, United States Indian inspector, on the part of the United States, with the Indians of the Rosebud Reservation in South Dakota. The agreement has the approval of the Department, and there is herewith submitted the report of the Secretary of the Interior and the Commissioner of Indian Affairs thereon:

Department of the Interior,
Washington, February 14, 1907.

Sir: By your reference of the 28th ultimo I am in receipt for report of copy of H. R. 24987, being a bill "to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect," and in reply I inclose herewith copy of a letter from the

Commissioner of Indian Affairs, dated the 14th instant, stating that the report on H. R. 24987 has been held pending the receipt of an agreement concluded by Inspector McLaughlin with the Indians of the Rosebud Reservation, which has now been received, and the Commissioner recommends that all that part of the bill after the words "A bill" be stricken out, and that the agreement, as concluded, together with a preamble and enacting clause, etc., be inserted in lieu thereof, which recommendation has the approval of the Department.

Very respectfully,

E. A. Hitchcock,
Secretary.

The Chairman Committee on Indian Affairs. *House of Representatives.*

Department of the Interior,
Office of Indian Affairs,
Washington, February 14, 1907.

Sir: I am in receipt by department reference for consideration and report of a letter from Hon. James S. Sherman, chairman of the Committee on Indian Affairs, House of Representatives, inclosing a copy of H. R. 24987, entitled "A bill to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect," upon which he requests a report.

According to an informal understanding with Hon. Charles H. Burke, the author of the bill, report on the reference was deferred pending the

receipt of the agreement concluded by James McLaughlin, United States Indian inspector, with the Indians of this reservation.

I am now in receipt by your reference of Inspector McLaughlin's report inclosing the agreement concluded by him.

I have considered H. R. 24987, and recommend that all that part of the bill after the words "A bill" be stricken out, and that the agreement as concluded, together with a preamble and enacting clause, with a second section providing for appropriations to carry the agreement into effect, be inserted in lieu thereof.

I have prepared a title for the ratification of the agreement, as follows:

"An act to ratify an agreement with the Indians residing on the Rosebud Indian Reservation, in the State of South Dakota, and to make appropriations for carrying the same into effect."

I inclose herewith a copy of this letter and of the bill H. R. 24987, amended as suggested, and respectfully recommend that, should this action meet with your approval, they be transmitted to the chairman of the committee on Indian Affairs with favorable recommendation.

Very respectfully,

F. E. Leupp,
Commissioner.

The Secretary of the Interior.

[#27]

(Letter of Dec. 15, 1906 to the Secretary of the Interior from Commissioner F. E. Leupp.)

Land 108138 — 1906.

**DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON**

December 15, 1906.

The Honorable,
The Secretary of the Interior.

Sir:

I have the honor to acknowledge the receipt, by Department reference for consideration and report, of S. 6618, 59th Congress, 2nd Session, to authorize the sale of a part of the Rosebud Indian Reservation in South Dakota, and for other purposes. The bill was referred to you by the Chairman of the Senate Committee on Indian Affairs, with a request for a report thereon for the information of the Committee.

Section one of the bill authorizes and directs the Secretary of the Interior, as thereafter provided, "to sell and dispose of the unallotted lands in that part of the Rosebud Indian Reservation within the limits of Tripp County, South Dakota." It provides that sections 16 and 36 of the lands in each township shall be reserved for the use of the common schools and paid for by the United States at \$1.25 per acre, and grants these sections to the State for such purpose; and it

provides further that any Indians to whom allotments have been made on the tract to be ceded may, in case they desire to do so, before the said lands are offered for sale, relinquish them and select allotments in lieu thereof on the diminished reservation.

Section 2 provides for the appraisal by legal subdivisions of the said lands, excepting sections 16 and 36, and for their disposal under the general provisions of the homestead laws, and for opening them to settlement and entry at not less than their appraised value by proclamation of the President, which shall prescribe the manner in which these lands shall be settled upon, occupied and entered; also, that the price of said lands when entered shall be that fixed by the appraisement or by the President, as thereafter provided for, which shall be paid for in accordance with the rules and regulations to be prescribed by the Secretary on the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments, to be paid in one, two three, four and five years, respectively, from and after the date of entry.

It is provided further in Section 2 that when, in the judgment of the President, no more of the said lands can be disposed of at the appraised price, he may by proclamation, to be repeated at his discretion, sell from time to time the remaining lands, subject to the provisions of the homestead laws or otherwise, as he may deem most advantageous, at such price or prices, in such manner, upon such conditions, with such restrictions, and upon such terms as he may deem best for all the interests concerned.

Section 3 provides that the proceeds arising from the sale and disposal of these lands, exclusive of the customary fees and commissions, shall, after deducting

the amount of the expenses incurred from time to time in connection with the appraisements and sales, be deposited in the Treasury of the United States to the credit of the Indians belonging and having tribal relations on the Rosebud Reservation, and expended for their benefit under the direction of the Secretary.

Section 4 appropriates out of any money in the Treasury not otherwise appropriated, \$65,000, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota as provided in the Act, and for the necessary expenses of appraising the land to be sold, with the provision that the money expended in appraising them shall be reimbursable and be deducted from the proceeds received from the sale.

Section 5 relates to sections 16 and 36 of the lands in each township which shall not be subject to entry, but shall be reserved for the use of the common schools, etc.

Section 6 vests the Secretary with full power and authority to make all needful rules and regulations as to the manner of sale, notice thereof, and other matters incident to carrying out the provisions of the act, and with authority to reappraise said lands if deemed necessary from time to time, and to continue making sales thereof in accordance with the provisions of the Act until all the lands shall have been disposed of; and provides that all lands ceded and opened to settlement under the Act, remaining undisposed of at the expiration of five years from the taking effect thereof, shall be sold and disposed of for cash under rules and regulations to be prescribed by the Secretary of the Interior—not more than 640 acres to any one person.

Section 7 provides that the United States shall act as trustee for the said Indians to dispose of the said lands and to pay over and expend the proceeds received from

the sale thereof only as received, and that nothing contained in the Act shall in any manner bind the Government to purchase any part of the lands to be disposed of except sections 16 and 36, or the equivalent, in each township.

In reporting on the bill I have the honor to say that at the request of the First Assistant Secretary of the Interior, I caused to be prepared and submitted to you on the 5th instant, for your consideration and approval, a letter of instructions for the guidance of Inspector McLaughlin in conducting negotiations with the Rosebud Indians for the cession of their surplus unallotted lands in Tripp County, South Dakota, which I am informally advised has been approved and transmitted to him.

He was told that the part of townships 101 and 102 north, range 73 west, and townships 103 and 104 north, range 73 west of the 5th principal meridian, south of White River, in said reservation, which is in Lyman County, should also be considered in connection with the lands embraced in Tripp County; and that the strip of land described lies east of the north part of this (Tripp) county as laid down on the map of the General Land Office issued in 1901, copy of which is enclosed for convenient reference.

As the Office was informed that a large number of Indians had taken allotments in the western and southwestern parts of the reservation on lands which are now and always will be worthless, being nothing but sand hills, I suggested that the Inspector consider the question of giving the Indians who have allotments in the reservation elsewhere than in Tripp County, permission, in the discretion of the Secretary of the Interior, to relinquish them and to take allotments in lieu thereof in some other part of the reservation,

including Tripp County, and as I had learned that the Indians believed that their children now living or born since allotments were made on the reservation, should be given allotments of 160 acres of land, I desired that he give this matter consideration also in connection with the proposed negotiations.

It was suggested also that the ceded lands should be disposed of under the general provisions of the homestead and *town-site* laws of the United States; that the price of the lands to be entered as homesteads should receive careful consideration, and that the following would seem to be fair terms, similar to those in the disposal of the ceded lands in Gregory County:

On all lands entered or filed upon within three months after they shall have been opened for settlement and entry, \$5 per acre, and on all lands entered or filed upon after the expiration of three months and within six months after they shall have been opened for settlement and entry, \$4 per acre; after the expiration of six months from the time when they shall have been opened for settlement and entry, \$2.50 per acre. The lands should be paid for in accordance with rules and regulations to be prescribed by the Secretary on these terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments to be paid in one, two, three, four and five years, respectively, from and after the date of entry; all land remaining undisposed of at the expiration of four years from the date of opening them to entry to be sold to the highest bidder for cash, at not less than \$2.50 per acre, under rules and regulations to be prescribed by the Secretary; and any lands remaining unsold for seven years after they shall have been opened to entry, to be sold to the highest bidder for cash without regard to said minimum limit of price.

I further suggested that the agreement should provide that the Indians shall have the benefit of whatever can be realized from the sale of lands for town-site purposes, and should authorize the Secretary of the Interior to reserve from the ceded lands such tracts for these purposes as, in his opinion, may be required for the future public interests, and to cause them to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe, in accordance with Section 2381 of the Revised Statutes; the net proceeds derived from the sale of such lands to be credited to the Indians as agreed upon.

I expressed the opinion that it should contain an article providing that the unallotted and unreserved lands, if any, in sections 16 and 36 in the cession, should be reserved for the use of the common schools of South Dakota, and paid for by the United States at the rate of \$2.50 per acre.

I should be pleased to have the provisions of the bill under consideration conform as far as possible to the suggestions contained in the approved instructions to the Inspector.

Accordingly, I respectfully suggest that the following amendments be made to it:

1. By inserting in line 6, page 1, between the word "within" and the word "the", these words: "the strip in Lyman County and"; also between the word "Dakota" and the word "provided", these words: "as laid down on the map issued by the General Land Office in nineteen hundred and one."

2. By striking out in line 10, page 1, the words "one dollar and twenty-five cents" and inserting the words "two dollars and fifty cents" in lieu thereof.

3. By adding the following after the word "reservation" in line 2, page 2: "and provided further, that the

Indians who have allotments in the reservation elsewhere than in Tripp County shall be permitted, in the discretion of the Secretary of the Interior, to relinquish them and take allotments in lieu thereof in some other part of the reservation, including Tripp County and the said strip in Lyman County; and that he shall also allot one hundred and sixty acres of land to each child of Indian parentage whose father or mother is, or was in case of death, a duly enrolled member of the Rosebud tribe of Indians, who is living at the time of the approval of this Act, and who has not heretofore received an allotment."

4. By striking out Section 2 and inserting in lieu thereof the following:

"Sec. 2. That the lands shall be disposed of under the general provisions of *the homestead and town-site laws* of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry; Provided, that the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars and the Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged: Provided further, that the price of said lands entered as homesteads under the provisions of this Act shall be as follows: On all lands entered or filed upon within three

months after the same shall be opened for settlement and entry, five dollars per acre, and on all lands entered or filed upon after the expiration of three months and within six months after the same shall be opened to settlement and entry, four dollars per acre; after the expiration of six months from the time they shall be opened for settlement and entry, the price shall be two dollars and fifty cents per acre. The price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior, on the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments or any of them when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited, and the entry shall be canceled and the lands shall be re-offered for sale and entry under the provisions of the homestead laws: And provided further, that nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one of the Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entry man shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of the land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead law as to settlement and residence, and shall have made all the required payments aforesaid, he shall be entitled to a patent for the

lands entered: And provided further, that all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry shall be sold to the highest bidder for cash at not less than two dollars and fifty cents per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold after the said lands have been opened to entry for seven years, may be sold to the highest bidder for cash without regard to the above minimum limit of price."

5. By striking out in line 20, page 4, the words "after deducting the amounts of", all of line 21, and in line 22, the same page, the words "the appraisements and sale", and adding after the word "Interior" in line 2, page 5, the words "and he may, in his discretion, pay a portion of the proceeds to the Indians in cash, per capita, share and share alike, if in his opinion such payments will be for the best interests of said Indians."

6. By striking out in line 5, page 5, the words "sixty-five thousand" and inserting the words "one hundred and thirty thousand", and by striking out in line 7, page 5, the words "and for the necessary ex-", and all of lines 8, 9, 10 and 11.

7. By striking out in lines 15 and 16, page five, the words "one dollar and twenty-five" and inserting the words "two dollars and fifty", and inserting in line 19, between the words "Tripp" and "are", the words "one said strip in Lyman County".

8. By striking out in line 7, page 6, the words "and with authority to re-appraise said", and all of lines 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, page 6.

9. By striking out in line 3, page 7, the words "and expend", because these are repeated.

10. By adding a section as follows:

"Section 7. The Secretary of the Interior is hereby authorized to reserve from said lands such tracts for town-site purposes as, in his opinion, may be required for the future public interests, and he may cause the same to be surveyed into lots and blocks and disposed of under such rules and regulations as he may prescribe in accordance with section twenty-three hundred and eighty-one of the Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinbefore provided.

I respectfully recommend that the amendments proposed be laid before the Chairman of the Senate Committee on Indian Affairs for the consideration of the committee, if they meet with your approval.

It is respectfully suggested that his special attention be invited to the fact that Inspector McLaughlin is now in the field with instructions to negotiate with the Rosebud Indians for the cession of their surplus unallotted lands in Tripp County and the strip above described; that a report is expected from him in a reasonable time, and that when received it will be laid before the Senate and House Committees on Indian Affairs for their consideration, accompanied by such recommendations as may seem proper in the premises.

I have heretofore said in substance that, in my judgment, it is a mistake for Congress to direct the restoration of the surplus lands of an Indian reservation to the public domain without first referring the question to the Indians; that they are apt to become dissatisfied and resentful, and that this greatly retards the Government's efforts for their advancement.

If action on the bill under consideration could be postponed until the receipt of Inspector McLaughlin's report, it might simplify matters to some extent.

The letter of the Chairman and the bill are returned herewith. A copy of this report is enclosed.

Very respectfully,

/s/F. E. Leupp
F. E. Leupp
Commissioner.

JHH.Ph.

[#28]

(Memorial of the South Dakota legislature petitioning Congress to hasten the opening of Tripp County lands in the Rosebud Reservation)

[41 Cong. Rec. 241 (1906-1907)]

Rosebud Reservation:

* * *

— memorial of legislature of South Dakota for restoration of public domain of portion of 3858, 3859, 3860, 3861.

[41 Cong. Rec. 3858-3861 (1907)]

PETITIONS AND MEMORIALS.

* * *

A joint resolution memorializing Congress to open Tripp County, S. Dak., to homestead settlement.

Be it resolved by the house of representatives (the senate concurring), That

Whereas there have been introduced into the National Congress certain measures looking to the opening to homestead settlement that part of the Rosebud Reservation, in the State of South Dakota, lying and being in Tripp County, S. Dak.; and

Whereas said county comprises approximately 1,000,000 acres of land which needs only settlement

and development to make it productive, and which when opened to settlement will add much to the assessment rolls and population of our great State; and

Whereas a line of railroad is now being constructed to the east boundary of said tract, which will greatly assist in its development as soon as it is opened to settlement; and

Whereas in its present wild state said land brings very little revenue to the Indians, and none whatever to the State: Therefore, be it

Resolved, That we, for the good of the Indians and for the further development of our State, petition the Congress of the United States to hasten to provide ways and means for the early opening of this body of land to homestead settlement under such restrictions and conditions as they may deem wise, and that the secretary of state be authorized and directed to transmit a copy of this resolution to the Speaker of the House of Representatives of the United States and to the President of the Senate.

M. J. Chaney,
Speaker of the House.

Attest:

James W. Cone, *Chief Clerk.*

Howard G. Shober,
President of the Senate.

Attest:

L. M. Simons, *Secretary of the Senate.*

I hereby certify that the within joint resolution originated in the house of representatives and was known in the house files as joint resolution No. 5.

James W. Cone, *Chief Clerk.*

State of South Dakota, *Office of the Secretary of State,*
ss:

Filed February 19, 1907, at 4:20 o'clock p.m.

D. D. Wipf, *Secretary of State.*

The VICE-PRESIDENT presented a joint resolution of the legislature of South Dakota: which was referred to the Committee on Interstate Commerce, and ordered to be printed in the Record, as follows:

State of South Dakota,
Department of State, Secretary's Office.

United States of America, State of South Dakota:

I, D. D. Wipf, secretary of state of South Dakota and keeper of the great seal thereof, do hereby certify that the attached instrument of writing is a true and correct copy of house joint resolution No. 11 as passed by the tenth legislative assembly of the State of South Dakota, and of the whole thereof, and has been compared with the original now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of South Dakota. Done at the city of Pierre this 19th day of February, 1907.

[SEAL.]

D. D. Wipf, *Secretary of State.*

A joint resolution memorializing Congress to pass a law enlarging the powers of the Interstate Commerce Commission, and to keep the highways of commerce open to all upon equal terms.

Be it resolved by the house of representatives (the senate concurring), That it is the sense and belief of the legislature of the State of South Dakota that it will be to the best interest of the people of the State and of the United States that Congress enact such laws as will keep the highways of commerce open to all upon equal

terms, and to put a complete stop to all rebates and abuses of traffic and of discriminations made to shippers, and to stop all rebates and discriminations of terminal track and sidetrack systems.

Resolved, That we most heartily concur in the following expressed opinion of President Roosevelt:

"The Government must in increasing degree supervise and regulate the workings of the railways engaged in interstate commerce, and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other."

Therefore we most respectfully petition and request the Congress of the United States to enact such laws as will prevent abuse and discrimination on the highways of commerce and of terminal and sidetrack systems.

Resolved, That the Members of Congress from South Dakota are hereby requested to use their influence and best efforts to procure the enactment of such needed legislation.

M. J. Chaney,
Speaker of the House.

Attest:

James W. Cone, *Chief Clerk.*

Howard C. Shober,
President of the Senate.

Attest:

L. M. Simons, *Secretary of the Senate.*

I hereby certify that the within joint resolution originated in the house of representatives and was known in the house files as house joint resolution No. 11.

James W. Cone, *Chief Clerk.*

State of South Dakota, *Office Secretary of State, ss:*
Filed February 19, 1907, at 4:20 o'clock p.m.

D. D. Wipf, *Secretary of State.*

A joint resolution memorializing Congress to open Tripp County, S. Dak., to homestead settlement.

Be it resolved by the house of representatives (the senate concurring), That

Whereas there have been introduced into the National Congress certain measures looking to the opening to homestead settlement that part of the Rosebud Reservation in the State of South Dakota lying and being in Tripp County, S. Dak.: and

Whereas said county comprises approximately 1,000,000 acres of land which needs only settlement and development to make it productive, and which, when open to settlement, will add much to the assessment rolls and population of our great State; and

Whereas a line of railroad is now being constructed to the east boundary of said tract which will greatly assist in its development as soon as it is opened to settlement; and

Whereas in its present wild state said land brings very little revenue to the Indians and none whatever to the State: Therefore, be it

Resolved, That we, for the good of the Indians and for the further development of our State, petition the Congress of the United States to hasten to provide ways and means for the early opening of this body of land to homestead settlement under such restrictions and conditions as they may deem wise, and that the secretary of state be authorized and directed to transmit a copy of

this resolution to the Speaker of the House of Representatives of the United States and to the President of the Senate.

M. J. Chaney,
Speaker of the House.

Attest:

James W. Cone, *Chief Clerk.*

Howard C. Shober,
President of the Senate.

Attest:

L. M. Simons, *Secretary of the Senate.*

I hereby certify that the within joint resolution originated in the house of representatives and was known in the house files as joint resolution No. 5.

James W. Cone, *Chief Clerk.*

State of South Dakota, *Office Secretary of State, ss:*

Filed February 19, 1907, at 4:20 o'clock p.m.

D. D. Wipf, *Secretary of State.*

State of South Dakota,
Department of State, Secretary's Office

United States of America, State of South Dakota:

I, D. D. Wipf, secretary of state of South Dakota and keeper of the great seal thereof, do hereby certify that the attached instrument of writing is a true and correct copy of House joint resolution No. 11, as passed by the tenth legislative assembly of the State of South Dakota, and of the whole thereof, and has been compared with the original now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of South Dakota.

Done at the city of Pierre, this 19th day of February, 1907.

[SEAL.]

D. D. Wipf, *Secretary of State.*

A joint resolution memorializing Congress to pass a law enlarging the powers of the Interstate Commerce Commission and to keep the highways of commerce open to all upon equal terms.

Be it resolved by the house of representatives (the senate concurring), That it is the sense and belief of the legislature of the State of South Dakota that it will be to the best interest of the people of the State and of the United States that Congress enact such laws as will keep the highways of commerce open to all upon equal terms, and to put a complete stop to all rebates and abuses of traffic, and of discriminations made to shippers, and to stop all rebates and discriminations of terminal track and sidetrack systems.

Resolved, That we most heartily concur in the following expressed opinion of President Roosevelt:

"The Government must in increasing degree supervise and regulate the workings of the railways engaged in interstate commerce, and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other."

Therefore we most respectfully petition and request the Congress of the United States to enact such laws as will prevent abuses and discrimination on the highways of commerce and of terminal and sidetrack systems.

Resolved, That the Members of Congress from South Dakota are hereby requested to use their influence and best efforts to procure the enactment of such needed legislation.

M. J. Chaney,
Speaker of the House.

Attest:

James W. Cone, *Chief Clerk.*

Howard C. Shober,
President of the Senate.

Attest:

L. M. Simons, *Secretary of the Senate.*

I hereby certify that the within joint resolution originated in the house of representatives and was known in the house files as "house joint resolution No. 11."

James W. Cone, *Chief Clerk.*

State of South Dakota, *Office Secretary of State, ss:*
Filed February 19, 1907, at 4:20 o'clock p.m.

D. D. Wipf, *Secretary of State.*

Mr. KITTREDGE. I present a joint resolution of the legislature of South Dakota, which I ask may be printed in the Record and referred to the Committee on Public Lands.

The joint resolution was referred to the Committee on Public Lands and ordered to be printed in the Record, as follows:

State of South Dakota,
Department of State, Secretary's Office,
United States of America, *State of South Dakota.*

I, D. D. Wipf, secretary of state of South Dakota and keeper of the great seal thereof, do hereby certify that the attached instrument of writing is a true and correct copy of house joint resolution No. 5 as passed by the tenth legislative assembly of the State of South Dakota,

and of the whole thereof, and has been compared with the original now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of South Dakota, done at the city of Pierre this 19th day of February, 1907.

[SEAL.]

D. D. Wipf, *Secretary of State.*

A joint resolution memorializing Congress to open Tripp County, S. Dak., to homestead settlement.

Be it resolved by the house of representatives (the senate concurring), That whereas there have been introduced into the National Congress certain measures looking to the opening to homestead settlement that part of the Rosebud Reservation, in the State of South Dakota, lying and being in Tripp County, S. Dak.; and Whereas said county comprises approximately 1,000,000 acres of land which needs only settlement and development to make it productive, and which when opened to settlement will add much to the assessment rolls and population of our great State; and

Whereas a line of railroad is now being constructed to the east boundary of said tract, which will greatly assist in its development as soon as it is opened to settlement; and

Whereas in its present wild state said land brings very little revenue to the Indians, and none whatever to the State: Therefore, be it

Resolved, That we, for the good of the Indians and for the further development of our State, petition the Congress of the United States to hasten to provide ways and means for the early opening of this body of land to homestead settlement, under such restrictions and conditions as they may deem wise; and

That the secretary of state be authorized and directed to transmit a copy of this resolution to the Speaker of the House of Representatives of the United States and to the President of the Senate.

M. J. Chaney,
Speaker of the House.

Attest:

James W. Cone, *Chief Clerk.*

Howard C. Shober,
President of the Senate.

Attest:

L. M. Simons, *Secretary of the Senate.*

I hereby certify that the within joint resolution originated in the house of representatives and was known in the house files as "joint resolution No. 5."

James W. Cone, *Chief Clerk.*

State of South Dakota, *Office Secretary of State, ss:*

Filed February 19, 1907, at 4:20 p.m.

D. D. Wipf, *Secretary of State.*

[#29]

(Legislative history of S. 6303 bill authorizing the allotment of lands to certain Sioux Indians of the Rosebud Reservation.)

[42 Cong. Rec. 494 (1907-1908)]

Rosebud Reservation: bill for allotment of lands to certain Sioux Indians on (see bill S. 6303).

[42 Cong. Rec. 174 (1907-1908)]

S. 6303—

Authorizing the allotment of lands to certain Sioux Indians of the Rosebud Reservation, in the State of South Dakota.

Mr. Gamble: Committee on Indian Affairs 3777.—Reported back (S. Report 440) 4211.—Debated and passed Senate 4404.—Referred to House Committee on Indian Affairs 4482.

[42 Cong. Rec. 3777 (1908)]

Mr. GAMBLE introduced a bill (S. 6303) authorizing the allotment of lands to certain Sioux Indians of the Rosebud Reservation, in the State of South Dakota, which was read twice by its title and referred to the Committee on Indian Affairs.

[42 Cong. Rec. 4211 (1908)]

Mr. GAMBLE, REPORTS OF COMMITTEES.

* * *

He also, from the same committee, to whom was referred the bill (S. 6303) authorizing the allotment of lands to certain Sioux Indians of the Rosebud Reservation, in the State of South Dakota, reported it without amendment, and submitted a report (No. 440) thereon.

[42 Cong. Rec. 4404-4405 (1908)]

LANDS OF ROSEBUD RESERVATION, S. DAK.

The bill (S. 6303) authorizing the allotment of lands to certain Sioux Indians of the Rosebud Reservation, in the State of South Dakota, was considered as in Committee of the Whole.

Mr. GORE. I should like to ask who is the author of the bill?

The VICE-PRESIDENT. The bill was introduced by the Senator from South Dakota [Mr. Gamble].

Mr. GAMBLE. The bill was prepared by the Department. The act of Congress of March 1, 1907, allowed allotments to be made to all minor children upon reservations in South Dakota, and on March 2 a law was passed opening the surplus lands on the Rosebud Reservation within the limits Tripp County, which permitted allotments to be made to the Indians upon that reservation who were then living. It limited the

general law as applied to all the reservations. This is simply to put the law back to where it was on the 1st day of March, 1907, and permit allotments to be made to minor children in South Dakota upon these particular reservations as long as there are surplus lands upon which allotments can be made.

Mr. GORE. Is it a Senate or a House bill?

Mr. GAMBLE. It is a Senate bill. It applies only to lands in the State of South Dakota.

Mr. GORE. It was introduced by the Senator?

Mr. GAMBLE. It was introduced by myself.

Mr. GORE. I have a bill pending authorizing the Secretary of the Interior to allot land to one Herman Lehman (Montechema) in the Kiowa and Comanche reservations in the State of Oklahoma. The bill has the approval of the Secretary of the Interior and the Indian Department. I want to offer it as an amendment to this bill if it would not be objectionable to the author of the bill. I do not want to embarrass the bill, and I do not think it would, because the bill I have pending is approved by the Commissioner of Indian Affairs. If the Senator has no objection I should like to offer it as an amendment to this bill.

Mr. GAMBLE. Of course, I would very much prefer that the bill should not be amended. It is a local matter and applies entirely to the Indians upon this particular reservation. Allotments are now being made to minor children, but under the act of March 2, 1907, opening a part of the lands, Indian allottees are permitted to change their allotments. This bill ought to become a law, and I am afraid if amendments are added it would delay it and probably defeat its passage. I very much prefer that the other bill should proceed in its regular way rather than have it as an amendment upon what is purely a local measure.

Mr. CULBERSON. Let the report be read.

The VICE-PRESIDENT. The Secretary will read the report at the request of the Senator from Texas.

The Secretary read the report submitted by Mr. Gamble, from the Committee on Indian Affairs, April 1, 1908, as follows:

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (S. 6303) authorizing the allotment of lands to certain Rosebud Sioux Indian children in the State of South Dakota, having had the same under consideration, submits the following report, and recommends that the bill do pass.

The accompanying communication from the Secretary of the Interior is submitted as a part of this report, which states fully the necessities for the passage of the measure and reasons why the same should become a law:

Department of the Interior,
Washington, February 7, 1908.

Sir: The act of March 1, 1907 (34 Stat. L., 1015, 1018), provides:

"That hereafter the President shall cause allotments to be made under the provisions of said act (the act of March 2, 1889, 25 Stat. L., 888) to any living children of Indians affected thereby who have not heretofore been allotted: *Provided*, That the tribe to which said Indian children belong is possessed of any unallotted tribal or reservation lands."

The effect of this act was to authorize allotments to be made to children of Indians belonging on any of the great Sioux reservations so long as the tribe inhabiting the reservation on which they were entitled to receive an allotment was possessed of tribal land. This affected the Standing Rock,

Cheyenne River, Lower Brulé, Crow Creek, Pine Ridge, and Rosebud reservations, in South Dakota, and Standing Rock Reservation, in North Dakota.

The act of March 2, 1907 (34 Stat. L., 1230), provides *inter alia* for the allotment of—

"One hundred and sixty acres of land to each child of Indian parentage whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation who is living at the time of the passage and approval of this act and who has not heretofore received an allotment."

The effect of the wording of this act was to limit the provisions of the act of March 1, 1907, so far as it affected the children of Indians belonging on the Rosebud Reservation to those who were born at the date of the passage of the act; and while the act of March 1, 1907, which is general in its character, provided that the children of Indians belonging on the Rosebud Reservation should receive allotments as long as that tribe was possessed of reservation lands, this provision was in effect repealed so far as it related to the Rosebud Reservation and resulted in discrimination against the children of Indians belonging on the Rosebud Reservation, which, in my opinion, should not exist. I have therefore caused to be prepared a draft of a bill which reenacts the provisions of the act of March 1, 1907, so as to make them applicable to the children of the Rosebud Reservation, and respectfully recommend that it be enacted into law.

Very respectfully,

James Rudolph Garfield,
Secretary.

The Speaker of the House of Representatives.

A bill.

Be it enacted, etc., That the Secretary of the Interior be, and he hereby is, authorized to cause allotments to be made under the provisions of the act of March 2, 1898, entitled "An act to divide a portion of the reservation of the Sioux Nation in Dakota into separate reservations and secure the relinquishment of the Indian title to the remainder, and for other purposes," to any living children of the Sioux tribe of Indians belonging on the Rosebud Reservation affected thereby, and who have not heretofore been allotted, so long as that tribe is in possession of any unallotted tribal or reservation lands.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

[42 Cong. Rec. 4482 (1908)]

SENATE BILLS AND RESOLUTION REFERRED.

Under clause 2 of Rule XXIV, Senate bills and joint resolution of the following titles were taken from the Speaker's table and referred to their appropriate committees as indicated below:

S. 6303. An act authorizing the allotment of lands to certain Sioux Indians of the Rosebud Reservation, in the State of South Dakota—to the Committee on Indian Affairs.

[#29A]

(Senate report to accompany S. 6303)

[S. Rep. No. 440, 60th Cong. 1st Sess. 1-2 (1908)]

Report No. 440.

ALLOTMENTS TO ROSEBUD SIOUX INDIAN CHILDREN.

April 1, 1908.—Ordered to be printed.

Mr. Gamble, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany S. 6303.]

Mr. Gamble, from the Committee on Indian Affairs, to whom was referred the bill (S. 6303) authorizing the allotment of lands to certain Rosebud Sioux Indian children in the State of South Dakota, having had the same under consideration, submits the following report and recommend that the bill do pass.

The accompanying communication from the Secretary of the Interior is submitted as a part of this report, which states fully the necessities for the passage of the measure and reasons why the same should become a law.

Department of the Interior,
Washington, February 7, 1908.

Sir: The act of March 1, 1907 (34 Stat. L., 1015, 1048), provides:

"That hereafter the President shall cause allotments to be made under the provisions of said act (the act of March 2, 1889, 25 Stat. L., 888) to any living children of Indians affected thereby who have not heretofore been allotted: *Provided*, That the tribe to which said Indian children belong is possessed of any unallotted tribal or reservation lands."

The effect of this act was to authorize allotments to be made to children of Indians belonging on any of the great Sioux reservations so long as the tribe inhabiting the reservation on which they were entitled to receive an allotment was possessed of tribal land. This affected the Standing Rock, Cheyenne River, Lower Brulé, Crow Creek, Pine Ridge, and Rosebud reservations in South Dakota and Standing Rock Reservation in North Dakota.

The act of March 2, 1907 (34 Stat. L., 1230), provides *inter alia* for the allotment of—

"One hundred and sixty acres of land to each child of Indian parentage whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation *who is living at the time of the passage and approval of this act* and who has not heretofore received an allotment."

The effect of the wording of this act was to limit the provisions of the act of March 1, 1907, so far as it affected the children of Indians belonging on the Rosebud Reservation to those who were born at the date of the passage of the act; and while the act of March 1, 1907, which is general in its character, provided that the children

of Indians belonging on the Rosebud Reservation should receive allotments as long as that tribe was possessed of reservation lands, this provision was in effect repealed so far as it related to the Rosebud Reservation and resulted in discrimination against the children of Indians belonging on the Rosebud Reservation, which in my opinion should not exist. I have therefore caused to be prepared a draft of a bill which reenacts the provisions of the act of March 1, 1907, so as to make them applicable to the children of the Rosebud Reservation, and respectfully recommend that it be enacted into law.

Very respectfully,

James Rudolph Garfield,
Secretary.

The Speaker of the House of Representatives.

A BILL.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized to cause allotments to be made under the provisions of the act of March second, eighteen hundred and ninety-eight, entitled "An act to divide a portion of the reservation of the Sioux Nation in Dakota into separate reservations and secure the relinquishment of the Indian title to the remainder, and for other purposes," to any living children of the Sioux tribe of Indians belonging on the Rosebud Reservation affected thereby, and who have not heretofore been allotted, so long as that tribe is in possession of any unallotted tribal or reservation lands.

[#30]

(Legislative history of S. 7379—a bill for sale of surplus lands in Rosebud Reservation.)

[43 Cong. Rec. 228 (1908-1909)]

Rosebud Reservation: bill for sale of surplus lands in (see bill S. 7379)

[43 Cong. Rec. 27 (1908-1909)]

S. 7379—

To authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Gamble: Committee on Indian Affairs 65.—Reported back with amendments (S. Report 887) 1559.—Debated 1679.

[43 Cong. Rec. 65 (1908)]

A bill (S. 7379) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect;

[43 Cong. Rec. 1559 (1909)]

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (S. 7379) to

authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, reported it with amendments and submitted a report (No. 887) thereon.

[43 Cong. Rec. 1679 (1909)]

ROSEBUD INDIAN RESERVATION LANDS.

The bill (S. 7379) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, was announced as next in order.

Mr. KITTREDGE. Let the bill go over under Rule IX.

The VICE-PRESIDENT. The bill will go to the calendar under Rule IX.

Mr. GAMBLE. Mr. President, I appreciate that under the rules of the Senate the objection may be insisted upon, but here is a matter of very good interest to the people of my State. The Rosebud Indians have a reservation of nearly 2,000,000 acres. A bill has been introduced and favorably reported upon by the Interior Department, and a unanimous report made from the Committee on Indian Affairs, under which it is proposed to open about one-half of the reservation to settlement. As the conditions are, those Indians have largely been allotted. A few minors are still to be allotted. Under no circumstances could action be taken looking to the opening of the reservation earlier than the coming fall. In the meantime all of the allotments

would be made. With this reservation standing unopened to settlement, it is retarding the development and growth of that section of the State.

If my colleague has any proper or reasonable amendments to offer to the bill, I will be very glad to have them offered and considered by the Senate, but I do protest that under the unanimous-consent agreement we entered into a mere objection can throw the bill over under Rule IX.

If it were in order, Mr. President, I would move that the Senate proceed to the consideration of the bill, the objection of the Senator to the contrary notwithstanding.

The VICE-PRESIDENT. The bill goes to the calendar under Rule IX, at the request of the senior Senator from South Dakota [Mr. Kittredge]. This completes the printed calendar under the unanimous-consent agreement.

(#30A – Senate report to accompany S. 7379)

[S. Rep. No. 887, 60th Cong. 2d Sess. 1-4 (1909)]

SALE OF PORTION OF SURPLUS LANDS ON ROSEBUD RESERVATION.

January 29, 1909.—Ordered to be printed.

Mr. Gamble, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany S. 7379.]

The Committee on Indian Affairs, to whom was referred the bill (S. 7379) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect, having had the same under consideration, beg leave to report that said bill do pass with the following amendments:

On page 8, line 2, strike out the words "one dollar and twenty-five," and insert in lieu thereof the words "two dollars and fifty."

On page 8, line 16, strike out the word "sixty-five" and insert in lieu thereof the words "one hundred and thirty."

The present area of the Rosebud Indian Reservation aggregates 1,800,000 acres. The lands proposed to

be opened to settlement under the provisions of this bill embrace an area of about 900,000 acres. It is the understanding of the committee that practically all allotments to the adult Indians on this reservation have been made. Provision has been made under recent statutes for the allotment of all the minor children on the reservation, and this work is now in progress and it is expected it can be completed before the expiration of the present year.

The provisions of the bill are substantially the same as the one passed during the last session of Congress for the opening of about 3,000,000 acres on the Cheyenne River and Standing Rock Indian reservations in the States of North and South Dakota. In that case the bill in question was submitted to the Indians upon those reservations prior to its passage, and with slight modifications was approved by them. It was at first contemplated to submit this bill, through an Indian inspector, for the consideration of the Rosebud Indians, but the inspector, who for a number of years has had that especial work in charge, is otherwise occupied and has been unable to take it up, and it is felt by the committee that the provisions of the bill are fair and just to the Indians in all respects, and it would delay the consideration of the matter unduly if action were withheld for that purpose, and the measure could not receive consideration during the present session of Congress.

The reservation is yet large, and in the judgment of your committee the surplus and unallotted lands are unnecessary for the use of the Indians, and that the opening of the reservation would result in a large increase in the settlement and the development of that part of the State, and would enhance to a very large extent the value of the holdings of the Indians. Your

committee regard it of the highest importance, not only to the Indians themselves but to the people of the State and of the General Government, that all surplus lands should be opened to settlement at the earliest practicable date.

The bill provides that prior to the issuance of the proclamation for the opening of the lands to settlement, the Secretary of the Interior shall cause allotments to be made to all Indians and minors belonging to or holding tribal relations with the Indians upon the reservation who have not heretofore been allotted. It also provides that the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the area proposed to be opened to relinquish such allotments and to receive in lieu thereof allotments anywhere within the reservation proposed to be diminished.

Section 16 and 36 of the lands in each township are not to be disposed of, but are reserved for the use of the common schools of the State, and these lands are to be paid for by the Government in conformity with the provisions of the act admitting the State of South Dakota into the Union. The Secretary of the Interior authorized to reserve such lands as are necessary for agency, school, and religious purposes in conformity with the practice of the Government in measures of this character.

The lands to be opened are to be inspected, appraised, and valued by a commission for that purpose appointed by the President of the United States, which appraisement is subject to the approval of the Secretary of the Interior. The land to be opened are reserved for homesteads, and one-fifth of the price is fixed for the land is to be paid upon entry thereof and the balance in five equal annual installments. The

Secretary of the Interior is also authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and the moneys realized from the sale thereof are to be applied to the benefit of the tribe. The moneys derived from the sale of the lands are to be deposited in the Treasury of the United States to the credit of the Indians of the tribe, and the same shall draw interest at 3 per cent per annum, and these moneys shall be expended for the benefit of the tribe under the direction of the Secretary of the Interior.

The communication from the Secretary of the Interior reporting upon the bill is herewith submitted and made a part of this report.

Department of the Interior,
Washington, January 26, 1909.

Sir: The department has received your letter of December 12, 1908, transmitting for recommendation and report a copy of Senate bill 7379, authorizing the sale and disposition of the surplus unallotted lands on a part of the Rosebud Indian Reservation, in the State of South Dakota. You suggest that Inspector James McLaughlin be detailed for the purpose of bringing the provisions of the bill to the attention of the Indians with a view of procuring an expression of their views regarding the opening of that part of the reservation described in the bill.

In response you are informed that the department recognizes the fact that Congress can enact legislation of this character without the consent of the Indians interested, but agrees with you that the views of the Indians should be procured before the bill is finally acted on, as it facilitates the work of allotment if the Indians of the tribe have

the provisions of the bill explained to them in advance and are given an opportunity to suggest amendments which, if deemed reasonable, Congress may be glad to adopt.

It agrees with you also that Inspector McLaughlin, owing to his long experience with the Sioux Indians, is the most satisfactory person to bring this matter to the attention of the members of the Rosebud tribe, and it is believed that he can do more with these Indians in the way of discussing the provisions of the pending bill than any other man now connected with the service.

Mr. McLaughlin, however, has been detailed recently to the work of supervising the distribution of over \$698,000 among some 4,440 beneficiaries under a recent judgment of the Court of Claims, payment for which was authorized by the act of May 30, 1908. (35 Stat. L., 514.) These beneficiaries are scattered throughout several States, and it will take three or four months, if not longer, to complete this work. Mr. McLaughlin's acquaintance with these Indians makes his services in connection with this payment almost indispensable, but while he is engaged therein an excellent opportunity will be given him to confer with the Indians of the Rosebud tribe regarding the intention of Congress to open a part of their reservation at an early date, thereby paving the way for ultimately procuring promptly the views of the Indians regarding the provisions of the pending bill.

The Rosebud Reservation has been reduced very rapidly during the last few years, and intimations have reached this department from trustworthy sources that there is danger that the land available for allotment may be exhausted if too large a reduction is made at this time. I do not believe, therefore, that the strip of land on the east of the present diminished reservation should be opened

yet; but should the Congress take action at this session, it is respectfully recommended that the bill be amended by striking out the description of the part of the reservation to be opened (page 1 and 2) and inserting in lieu thereof the following:

"Commencing at a point on the tenth standard parallel of latitude north where it is intersected by the western boundary of the Rosebud Indian Reservation, in the State of South Dakota; thence north along said boundary line to a point in the center of the main channel of the White River; thence easterly along the center of the main channel of the said White River to a point where the range line twenty-five west of the sixth principal meridian intersects the same; thence south on said range line twenty-five west of the sixth principal meridian to a point where it is intersected by the tenth standard parallel of latitude north; thence west along said parallel to the place of beginning."

Whether action is had on the pending bill at this or subsequent sessions of the Congress it is recommended further that the bill be amended by striking out the words "one dollar and twenty-five cents," in section 7, page 8, line 22, and inserting in lieu thereof the words "two dollars and fifty cents;" and that section 8, page 8, line 16, be amended by striking out the word "sixty-five" and inserting in lieu thereof the words "one hundred and thirty."

In connection with the foregoing, attention is invited to the fact that prior to the passage of the act of May 29, 1908 (35 Stat. L., 460), Inspector McLaughlin was sent to the Standing Rock and Cheyenne River reservations for the purpose of bringing to the attention of the Indians the provisions of the bill then pending to open the

parts of the reservation named. At a meeting of the Indians of both of the tribes named it was informally agreed that \$2.50 per acre would be paid them for all lands granted the States of North and South Dakota for school purposes. As originally passed by the Senate the bill then pending (S. 1385, 60th Cong., 1st sess.) did provide for the payment of these lands at the rate of \$2.50 per acre, but as passed in the House the price was reduced to \$2 per acre; but when the bill came from conference and as finally passed it provided for the payment of these lands at the rate of \$1.25 per acre.

On being informed of the provisions of the act of May 29, 1908, *supra*, the Indians of both reservations expressed themselves as being very much dissatisfied and disappointed, believing that the Government had not exercised good faith in dealing with them in this matter, inasmuch as in their opinion they should have received \$2.50 per acre for their land, and as appeared from the above facts this was the belief also of a large number of Members of Congress who had given the matter careful attention.

It is believed, therefore, that the Congress can not only well afford but would desire, with all these facts before it, to arrange to pay the Indians for all lands granted the State of South Dakota for school purposes at the rate of \$2.50 per acre.

Very respectfully,

James Rudolph Garfield, *Secretary*.

Hon. Robert J. Gamble,
United States Senate.

[#31]

(Letter of February 10, 1909 to Senator Clapp from the Secretary of the Interior concerning S. 7379)

Subject:
Senate Bill No.
7379.

Hon. Moses E. Clapp,
Chairman, Committee on Indian Affairs,
United States Senate.

Sir:

I am in receipt of your letter of December 15, 1908, transmitting for recommendation and report a copy of Senate Bill No. 7379, authorizing the sale and disposition of the surplus unallotted lands on a part of the Rosebud Indian Reservation, South Dakota.

In response you are informed that the Department is in receipt of a copy of the same bill from Hon. Robert J. Gamble, United States Senate, who suggested that Inspector James McLaughlin be detailed for the purpose of bringing this matter to the attention of the Indians of the Rosebud tribe with a view of procuring their views on the provisions of the bill.

The Department fully recognizes the fact that Congress can enact legislation of this character without the consent of the Indians interested, but believes that it promotes a better spirit among the Indians, and facilitates the work of allotment, if the members of the tribe have the provisions of the bill explained to them in advance, and are given an opportunity to suggest amendments, which, if deemed reasonable, Congress may be glad to adopt.

It recognizes also the fact that Inspector McLaughlin, owing to his long experience with the Sioux Indians, can do more with the members of the Rosebud tribe in the way of discussing the provisions of the pending bill than any other man now connected with the Service. Mr. McLaughlin, however, has been detailed recently to supervise the work of distributing over \$698,000 to some 4,440 beneficiaries under a recent judgment by the Court of Claims; payment for which was authorized by the Act of May 30, 1908 (35 Stat. L., 514). These beneficiaries are scattered throughout the States of North Dakota, South Dakota and Minnesota. It will take three or four months, if not longer, to complete this work, and Mr. McLaughlin's acquaintance with these Indians makes his services in connection with this payment almost indispensable; but while he is engaged therein an excellent opportunity will be given him to confer with the Indians of the Rosebud tribe regarding the intention of Congress to open a part of their reservation at an early date thereby paving the way for a prompt expression of their views when the matter is formally brought to their attention.

If the Committee and the Congress agree with the Department and Senator Gamble that the Indians should have an opportunity to be heard before the bill is finally passed and that Inspector McLaughlin is the most satisfactory person to conduct the council, then action on the bill under discussion could well be delayed until this can be done. Again, it will probably take twelve months longer to complete the work of making allotments in severalty to the Indians on this reservation under existing laws, and as this work must be finished before the surplus lands can be appraised and opened it is not believed that such opening can be had prior to the year 1910. If action on the pending

bill is delayed until the next session of the Congress, an opportunity will have been given this Department to complete the work of making allotments in severalty on this reservation and to have Inspector McLaughlin obtain from the Indians an expression of their views regarding the method of opening the surplus lands. For these reasons it is not seen wherein any material advantage will be gained by passing the pending bill at this session of the Congress.

The Rosebud Reservation has been reduced very rapidly during the last few years, and intimations have reached the Department from trustworthy sources that there is danger that the land available for allotment may be exhausted if too large a reduction is made at this time. Hence I do not believe that the strip of land on the east of the present diminished reservation should be opened yet; but, should the Congress take action at this session, it is respectfully recommended that the bill be amended by striking out the description of the part of the reservation to be opened (pages 1 and 2) and inserting in lieu thereof the following:

Commencing at a point on the tenth standard parallel of latitude north where it is intersected by the western boundary of the Rosebud Indian reservation in the State of South Dakota; thence north along said boundary line to a point in the center of the main channel of the White River; thence easterly along the center of the main channel of the said White River to a point where the range line twenty-five west of the sixth principal meridian intersects the same; thence south on said range line twenty-five west of the sixth principal meridian to a point where it is intersected by the tenth standard parallel of latitude north; thence west along said parallel to the place of beginning.

Whether given consideration at this or subsequent sessions of the Congress it is recommended further that the bill be amended by striking out the words "one dollar and twenty-five cents" in section 7, page 8, line 2, and inserting in lieu thereof the words "two dollars and fifty cents", and that section 8, page 8, line 16, be amended by striking out the words "sixty-five" and inserting in lieu thereof the words "one hundred and thirty."

In connection with the foregoing, attention is invited to the fact that prior to the passage of the Act of May 29, 1908, (35 Stat. L., 460), Inspector McLaughlin was directed to proceed to the Standing Rock and Cheyenne River Reservations for the purpose of bringing to the attention of the Indians the provisions of the bill then pending to open parts of the reservations mentioned. At a conference with the Indians of both tribes it was agreed informally that they were to receive \$2.50 per acre for all lands granted the States for school purposes. As originally passed by the Senate the bill then pending (Senate 1385, 60th Congress, 1st Session) did provide for the payment of these lands at the price of \$2.50 per acre, but as passed in the House the price was reduced to \$2.00 per acre; but when the bill came from conference and as finally passed, it provided for the payment of these lands at the rate of \$1.25 per acre.

When the Indians on these two reservations were informed of the provisions of the Act of May 29, 1908, *supra*, they were very much dissatisfied and disappointed, claiming that good faith on the part of the government had not been exercised in dealing with them in this matter, believing that they should have received \$2.50 per acre for their land, and as appears from the above facts this was also the belief of a large

number of members of Congress who had given the matter careful attention.

I therefore hope that Congress, with all these facts before it, will arrange to pay the Indians for all lands granted the State of South Dakota for school purposes at the rate of \$2.50 per acre.

In view of the fact that this matter is complicated, as shown above, and that Inspector McLaughlin, who is especially desired to negotiate with the Indians, can not perform that duty for several months, I suggest that no further action be taken upon this bill at this session of Congress, but that this proposed legislation await a conference with the Indians by Inspector McLaughlin, and a further report to Congress.

Very respectfully,

/s/James R. Garfield
James R. Garfield
Secretary

[#32]

(Legislation history of S. 183—a bill for the sale of surplus and unallotted land in the Rosebud Reservation)

[44 Cong. Rec. 268 (1909)]

Rosebud Reservation: bills for sale and disposition of portion of surplus and unallotted lands in (see bills S. 183; H. R. 9544).

[44 Cong. Rec. 5 (1909)]

S. 183—

To authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Gamble; Committee on Indian Affairs 132.

[44 Cong. Rec. 132 (1909)]

Mr. GAMBLE introduced a bill (S. 183) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, which was read twice by its title and referred to the Committee on Indian Affairs.

[#33]

(Legislation history of H. R. 9544—the House of Representatives' companion bill to S. 183, a bill for the sale of surplus and unallotted lands in the Rosebud Reservation)

[44 Cong. Rec. 268 (1909)]

Rosebud Reservation: bills for sale and disposition of portion of surplus and unallotted lands in (see bills S. 183; H. R. 9544).

[44 Cong. Rec. 315 (1909)]

H. R. 9544—

To authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Burke of South Dakota; Committee on Indian Affairs 2013.

[44 Cong. Rec. 2013]

By Mr. BURKE of South Dakota: A bill (H. R. 9544) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[#34]

(Excerpt from letter dated February 12, 1907 from Inspector McLaughlin to the Secretary of the Interior (N.A. Group 75 BIA letters received, 1881-1907, 17945—Land—1907))

[p. 3] After a full discussion of the different propositions, I prepared the agreement embracing the provisions as agreed upon, which, after being read and explained to the Indians assembled, was accepted and the agreement was immediately signed by 43 Indians of those present. Then, in order to obtain the required number of signatures and make it unnecessary for the Indians to travel long distances from their homes to the Agency for that purpose in the cold weather, I visited the headquarters of the several districts of the reservation where the Indians of the respective districts met me, thus visiting Spring Creek, Cut Meat, Butte Creek, Bad Nation, Big White River, Bull Creek, and Ponca Creek stations, at which points I explained the provisions of the agreement to the Indians assembled and received the signatures of all concurring in the agreement.

Some opposition was met with in the beginning, particularly in the Cut Meat and Black Pipe districts, but it was [p. 4] gradually overcome, and I am of the opinion that had the weather been pleasant so that the Indians could have been reached, that the signatures of nearly every Indian of the reservation would have been obtained, there being practically no opposition after the agreement was reached and fully understood by the Indians, and most of those who were in opposition for a time, signed the agreement before I left the Agency.

There are 1368 male adult Indians over 18 years of age belonging on the Rosebud Reservation, 705 of

whom have signed the agreement, being a majority of 42 of the male adults, and there is not much doubt but that it would have been unanimous, or nearly so, if all the interested Indians could have been reached.

(Excerpt from letter dated April 2, 1909 from the First Assistant Secretary of the Interior to Inspector McLaughlin (N.A. Group 75, BIA, Central File 1907-39, File 24400-09-3081, Pine Ridge))

You are hereby directed to take up with the Indians of the Pine Ridge and Rosebud Reservations the matter of opening parts of these reservations to settlement and entry, bills for which were pending before the last Congress.

[#34A]

(Minutes of Council of March 11, 1909 and April 21, 1909)

[1] Rosebud Agency, South Dakota,
March 11, 1909.

After Inspector McLaughlin had explained Senate Bill No. 7379 60th Congress, 2nd Session, to the assembled Indians, the several speakers replied as follows:

High Pipe:

My Friends: This question has been put before us and we have heard it and now let us go home and consider this question before we can answer this.

Sorrel Horse:

My Friend: You are a friend of ours. You have come to see us again to get some land. You tell us that the Great Father has sent you to see us about this land. I have always been a great friend of yours and have always tried to help you in every way that I can. We want to talk about this what you have told us so that we may answer you. We used to have four chiefs and headmen and now three have died and only one is living. This is a big reservation and I think the better way is to give some of these old men allotments and see them before we can tell you about it. As to giving a portion of this reservation, my friend, I feel very hard. We will have some children to grow and there will be no land for them if we give this away. That is all I want to say.

Crow Dog:

My Friend: This is what I want to say. When you came here once you promised us \$5.00 per acre. I think you made a mistake on some of that. You want to come to us again. When you came back we do not understand this question but we want to help you. We want to see

some of the promises fulfilled that you made [2] before you ask for more land. This piece of land you just mention and tell us. This is what you ought to say. The Great Father and the Commissioner, who is your friend, has sent me to talk about this land with you. This is the way you ought to say it and I am glad to mention this. A tribe of Indians named Santee is getting some money and we think it is a part of the Black Hills Treaty and we have a share in the same. I understand, my friend, that you have come to see what you can accomplish in getting this land. We have lots of business with the Great Father which he has not fulfilled with the tribe. I understand the question that you are leaving with us and you are going away. You are going to the office of your superior officer and we want you to tell him that we want to come and see him "eye to eye" and tell him what we think of this and talk with him. That is all I have to say.

High Pipe:

I just want to say a few words. I have been just away to Washington. The last time we were there they showed us that bill and I look at him very sharp with a hard eye. We said that we had read the bill before and the Senator that showed it to us had a map and we told him that we did not like it. My friend, we are Indians and we cannot accomplish much if you do not help us. This is one thing that we went to Washington for and we went to the Commissioner and mentioned this matter to him. We have waited for an answer but it has not yet come. I look at our young men and some of them has a quarter section of land allotted to them. Some of them have four children and some have five. What will their children do if we give all of this land away. How are they going to make a living. They make a rule that they cannot draw their money until they are 18 years old. I think this is very hard. How will their children [3] make their living? Will

the Great Father consider their families? Why don't you give them tools and other things to make their living for themselves. Some of them have sold their inherited land and some of them have got a good price for their lands. I now understand that the \$10.00 per month has been taken away and what are they going to do? I think this is pretty hard. I think that they should be given some money that they may buy what they need to make their living. When they have this they will make their living. The Great Father has made a treaty with us for two pieces of land and told us that we could keep the rest. We have told the Great Father so. We have sold some land and we now know the price of land. They ask us how much you want for your land. We say so much and some one makes a high bid and some one makes a low bid and I think you will tell us to take the low bid. I ask the Commissioner "you look at me and say if I am an old or a young man". He said "you are an old man". When I went to Washington I told him that he ought to give us some blankets and clothing with the money we have. I think this is a good idea. When I came back I told this to our Agent and he did not say anything. I asked him why he could not take some of that surplus \$1.25 money and buy those things, and you will see that we get this. When Gen. Crook made the first treaty with us and made some promises we believed him and we signed. We all chipped in about 20 cents apiece to go to Washington to see the Great Father about this land. If my friend, Hollow Horn Bear, was here he would tell you the same thing. He had a talk before the Senate and [4] before the Commissioner and we have said in Washington that I do not think this is right, my friend. And I want to tell you that we do not want to dispose of this land and we will all stand together and not dispose of this land. The Great Father wants us to give up this land and he has sent you to see if you can

get it. And I want to tell you that we do not want to sell it. There is my Agent and he is my friend and I talk with only one tongue. I never talk with two tongues. They want to change the freight from Valentine to Crookston. We get 35 cents for hauling from Valentine and we will only get 25 cents from Crookston and the people don't want this. When I went to Washington I asked the Great Father another thing. We want Indian Judges here. I told him that the Indian Judge would help our Agent in the sale of land. I heard that the Inspector with the white head and the metallic teeth was here to speak with us about some land and I want to give you a new name. You have been to see us about more land and this is the name I want to give you. *"The man who bothers his friends for more land"*.

Eagle Horse:

When we went to Washington a Senator named Gamble came and showed us a bill and a map in which we were to sell some more land. I told him that we did not want to sell any more land. We spoke to the Great Father about this and he has not answered us yet. I told the Senator that we wanted the vacant land for our children that have not been allotted yet. Of course I suppose they can do what they please and if this is done we have nothing to say. You want to make a treaty with us for that land [5] and we do not want to sell it. We know that you talk with a good heart. Of course we know that you were told to do this and we know it. Some of our people have allotments and some of the old ones have not. You will go home without taking any land with a good heart but you will be back in two or three years to see us again. This is what I wanted to tell you from the people at Black Pipe and now I will go home.

Silas P. Walker.

My Friend: When you came here before I wore citizen's clothes and now you are here again and I am still wearing citizen's clothes. I always try to be a white man. When you came here before I told them to sign that treaty and that they would be rich and you see that I am still poor. When I heard them talk about that bill I told them that they could not sell that land for they needed it for their children that would have to grow up. We are Indians and are not wise and we want you to help us in this matter. We do not want to dispose of any more of this land. We have some that have not received any land and we do not think that we can spare any more of this land. There will be children to grow up that will need this land. That is all I have to say now, my friend.

He Dog:

My Friend: You have spoken some words and I have heard it all. Some of our young men have spoken some words and I have listened. Sometimes I look at our young men and feel sorry for them. I make a garden but they do not, so they are poor. I have just taken some land. I took a quarter section in Meyer Co. and a quarter section in Tripp Co. I sold the quarter section in Tripp Co. and now I have a team of horses and a buggy which I drive around. [6] I thought I was going to go to Washington and they took my money and went there. I would have told the Great Father that we did not want to sell this land. I would like to have you leave this question with us so that we may talk it over. Many of our people are not here. We want to go to Washington and talk over this question with the Great Father. I am an Indian and I do not talk with two tongues. I like to talk with only one tongue. That was why I wanted to go to Washington. I never talk hard words with our Agent. But I want to know why we cannot get credit in the stores on account of our annuity

payments. I think that this is hard when we have some money coming and we cannot use it until we get it in hand. Some of our people are sick and they will not give them permission to kill beef. Some of them want beef tea and offal. This is hard on our people. This is what I want to say and that is why I want to go to Washington to see the Great Father and accomplish this. This is all I want to say.

Bear Looks Back:

My Friend: We have been just told that you are here and want to speak with us. Many of my people could not come and they have told me to come and speak for them. They told me that you had come for more land and they told me to tell you that it was "No Go". An old woman came to me just before I left and she told me to say this right out and not be ashamed and she cried when she said it. She said that there were many of our Indians that did not have any land and that we could not sell any more of this land if we did not want to starve. When you came before to make the treaty and you could not get the three fourths majority I took you to Little White River and got a lot of them to sign for you. [7] I live in that part that they want to open up and I want to say that our people do not like it. Most of our people live in that part and we do not want to sell this land. This is my mind on this. We want to save this land for our children that will grow up. They will need it. If they do not have land, what will they do? They will have to starve. My friend, I have not got much to say only that my people have told me to come here and tell you this. We do not want to give up this land.

Ring Thunder:

I have a little idea in my mind that I want to tell you. You have come here from the Great Father who has told you to get more land and I want to tell you that this

is very hard. My people do not want this and our young men will have increase in their family and they will want this land. We thought that when we gave up the other land that we would not have to give up any more. Now you are here to get some more land and it is very hard. If we give up this land we will be very poor. That is all I want to say.

Dog Soldier:

My Friend: The police have just told us that you have wanted to talk with us about some more land. Many of our people have not come and I want you to let us go home and hold a council and talk it over. We want you to come out and talk with us. Another thing that I want to talk with you is this. When any of our children who are not 18 years old die, what becomes of their money? We want that because we need it. We want to go out home and talk over this matter with our Indians. Many are not here and we cannot say much until we have talked with them. I want to [8] ask my Agent to let us hold a council and we will then talk to you and tell you what we think. This is all I have to say.

Broncho Bill:

My Friend: Our Indians that went to Washington have told us about that bill and I want you to go and tell that Senator to respect his office and respect us. We do not want to give up this land for we need it for our young men that are growing up. They have children and will have some more. Where will they get land if we give this away. Where will they live and how will they make their living? I think that Senator has a bad heart toward us in trying to get this land from us. Let that Senator respect his office and his superior officers. We do not want to give up this land as we are very poor now. When they made the last treaty they told us that we would not have to give up any more land. This is the way that we

understood that. We want to tell you to go back and tell them that we do not want to give up any more land. We are common Indians and do not understand much. We hope that they will not take any more of this land and open any part of our land. That was all I wanted to tell you.

/s/ M.A. Buffalo
Stenographer

[1] PROCEEDINGS OF COUNCIL HELD BY JAMES MCLAUGHLIN, U.S. INDIAN INSPECTOR, with the Indians of the Rosebud Reservation, South Dakota, with reference to the opening of a part of their reservation to settlement, as contemplated by Senate Bill 7379, Sixtieth Congress, 2nd Session: Council convened at Rosebud Agency, South Dakota, at 2:00 P.M., Wednesday April 21, 1909, with Superintendent Edward B. Kelley and about 100 male adult Indians of the reservation in attendance, with Louis Roubideaux and Louis Bordeaux, interpreters: Supt. Kelley:

My friends, it is not necessary for me to introduce Major McLaughlin at this time as he has been here a great many times before. He comes here under instructions of the Department and the Secretary of the Interior to talk with you further about opening more of the reservation. He was here a short time ago and held a short council with you on March 11, 1909, and at that time he told you that he would report to the Department what you said and await for instructions before proceeding any further. Now I have seen a copy of his letter to the Department what was done in your council and also in the council at Pine Ridge. In that letter he said that he would like to report at Washington and talk this matter over with the Commissioner and the Secretary of the

Interior. But as the time was short and in order to accomplish anything he came back from St. Paul where he had gone on his way to Washington from here and the Assistant Secretary of the Interior wired him on the 26th of March to proceed at once to the Pine Ridge Reservation and that he [2] would receive instructions there. When he came back to Pine Ridge he received a letter of instructions to council with the Indians of Pine Ridge about this matter and then proceed here. As I told you in council on the 3rd of April, he had written me that he would be here about the middle of the month to council with you on the same subject. So we will let Major McLaughlin to present this matter to you in his own way and when he is through we want you to express yourselves in any way that you want to talk afterwards."

Inspector McLaughlin:

"My friends: I am glad to meet you again and, when considering the inclement weather and bad roads, to see so many of you present. I have visited your agency many times in the past fourteen years and our relations have always been very pleasant and am pleased to meet you again today. You all know me well and know that I am your friend and have an interest in your welfare.

I am here again under orders of the Secretary of the Interior to present to you the question of opening to settlement the surplus lands of a certain part of your reservation as contemplated by a bill introduced by Senator Gamble on December 9th last, and you have been assembled here in council today that I may explain to you this pending legislation.

On the 11th of last month, while here supervising a payment to certain Sisseton and Wahpeton Indians, I explained the provisions of this Senate bill to a number of your leading men, who met me here by request for that purpose, so that it might be discussed among

yourselves and that you would thus be the better prepared to consider the proposition understandingly when the question was formally presented to you in full council.

[3] Several of your people, who were in attendance at that conference, expressed themselves as opposed to the opening of any more of your reservation and stated that a delegation of your people had but recently returned from Washington where they had met the Indian Commissioner and Senator Gamble to whom they had protested against the opening of any more of your lands, and replying thereto I stated that I was simply advising you of the proposed opening, as I had been directed to do while here supervising that Sisseton and Wahpeton payment, and that, should I be directed to return and submit the question to you formally, it would be my duty to do so, and having been so directed to return here for this purpose has brought us together in council here today, and bear in mind that I am not here of my own volition but under instructions of the Secretary of the Interior.

My friends, this is the fifth time that I have negotiated with you for lands, and have been here so often with reference to the cession of lands, that my friend, High Pipe, has given me the name of "The man who bothers his friends for more land". But you all know full well that I do not want any of your land for my own use, but the Government needs all surplus lands of Indian reservations to provide homes for the rapidly increasing population of the United States.

Some of you may think that I come here too frequently with questions of this kind, but if you consider the matter in its true sense, you will appreciate the fact that it is better than a person, who from long and friendly association is acquainted with each and all of you and knows your needs, should be sent to present a

matter of this importance than a person of less knowledge of you people and the resources of your reservation.

I assure you that any proposition that I may at any time endeavor to have accepted by Indians is because I regard it for their [4] best interests.

This document which I hold in my hand is the Gamble bill referred to and I will now proceed to explain it so that you may all understand its provisions."

Inspector McLaughlin here reads and explains Seante bill 7379 Sixtieth Congress, 2nd Session, thus consuming one hour and then said:

"I have now explained the provisions of the bill so clearly that all present should understand it, and when considering the proposition you should not forget that the law, as defined by the Supreme Court, vests in Congress the power to open the surplus lands of Indian reservations without the consent of the Indians, and you are all aware of this power of Congress, it having been fully explained to you in previous negotiations of these past few years.

The question is now before you and I desire to hear from you regarding the proposed opening of that part of your reservation contemplated by the bill which I have read and explained. Now I would like to hear from you in regard to this matter.

Hollow Horn Bear:

"My friend, you have explained this bill to us and I think that the best way for us to do is to go to our homes and districts and talk this matter among ourselves and hold councils and we will then report to you what agreement we have reached among ourselves. We have not discussed this matter since you have been here last in council only among each one of us. It will be better for us to go home and talk over this matter and I want to ask our Agent to let us go home and discuss this question and

I want to ask him to let us dance for in that way we can get a great many more [5] to come to the council when there is a dance.

Supt. Kelly:

You have my permission to go to your homes and hold councils to discuss this matter but I do not think that it is well for you to hold this dance for this is a matter of great importance to you and I am sure that you would not do this question full justice if you were given to frivolity and amusement while you were discussing this question.

Inspector McLaughlin:

"My Friends, I do not think that you had better hold any dances while you are debating over this matter, as this is of great importance to you. I want you to go to your homes and districts and hold councils among yourselves and come to some agreement and meet me again soon and notify me what agreement you have reached. Let us now set a date when we are to meet again."

Hollow Horn Bear:

"My friend, I see that it was foolish of me to ask you to let us dance at our councils as we are in the habit of giving away things at our dances and should we dance while we were discussing this question we might want to give you this land."

Here the Indians assembled conferred among themselves with regard to setting a date when they would next meet Inspector McLaughlin and agreed that they should meet him on Monday, April 26, 1909.

Inspector McLaughlin:

"My friends, you tell me that you will meet me here again next Monday. We will not adjourn to meet here again next Monday morning at 10:00 o'clock."

Council adjourned at 4:15 P.M.

[6] Council reconvened Monday, April 26th, 1909, at 2:00 P.M. with about 250 Indians in attendance:

Inspector McLaughlin:

My friends, we are again assembled in council after an adjournment of four days which was granted at your request that you might discuss among yourself the question which I presented to you last Wednesday for your consideration, and having been discussing it among yourselves during our adjournment you are doubtless prepared to express yourselves regarding the proposed opening of that part of your reservation which I explained to you in our opening council and I would now be pleased to hear from you regarding same.

Hollow Horn Bear:

Now my friend whenever you make any negotiations with the Indians you have some subject for them to consider. Now we have something that we have been working ourselves tired discussing this question and we have come to some conclusion and we have come to tell you. You come here to talk about this land and I will tell you what they feel about giving any more land. They talk about letting you have the land that is north of the 10th Standard Parallel. The land that is in the eastern part of our reservation we do not want to let go. And the country that we can spare we want to have something to say about that. They say that they should get \$10.00 per acre for it. If there is any mineral land in the country north, it should be higher. If there is any coal lands in that, it should be higher. In selling those lands we want it to be in this way. They wish those two eastern tiers of [7] townships that they do not want to sell including the timber reserve to be allotted to the children. After the children are allotted and there is any more surplus land we want those men that are dead and entitled to land according to Section 8 of General Crook's treaty (Act of

March 2, 1889) to have this land. We think that those men are entitled to this land. And then as soon as some more children are born they should take allotments as soon as they are born. Of course whatever we accomplish the Secretary would have the money in his hands. I do not want that. Now in case these lands are sold they should have the payments made in three years. Also they do not want the minor children's money put away for them. About those lands that have been sold we want the money in cash so that we can have some money to live on and do some good with ourselves and our relations. Now there is something else that will help these people and I want to tell you. That is the grazing of cattle on our reservation. We do not want that. These cattle come here and they eat up all the grass that our cattle would have and of course our cattle do not have anything to eat and they starve. When these cattlemen are allowed to have their cattle on this reservation they are supposed to be on the unallotted land and not on the allotments. This is not so as they are on the allotments all the time and run at large, and the people do not want those foreign cattle on this reservation.

Now my friend, whatever we have put down here before you we want you to take to our Great Father and you will tell him that this is the way we wish to make this treaty and if he says alright we will make this treaty. This is our way and whenever anybody does us a favor we always remember him. Now we pray you to respect what we have said and that you will help us in that matter. [8] As I told you before we want the Great Father to know this so that he will understand what we want. We wish the Great Father to understand this thoroughly.

Ralph Eagle Feather:

Hollow Horn Bear has told you what the council has said but there is something that he has forgot and that is

what I want to tell you. You have come here to ask for a part of this land and tell us to discuss and hold councils and consider this matter. They have considered this matter and I want to tell you and this is what the people have requested to tell you. This is about sections eight and nine of General Crook's treaty (Act of March 2, 1889). Those sections say that as soon as that treaty was made all the people that were living at that time should have land. The second is this. There are many men that has families who have taken allotments and who have not got their benefits as provided in Section seventeen in that treaty. That as soon as the children become eighteen years of age they should get those benefits. That those who are eighteen years of age and have families and children, the Agent should give them work and they should receive some payment and they should also receive those allotment benefits so that they will be able to make their living.

We do not want to give up those two tiers of townships in the eastern part of Meyer County. Now about that land that is north of the 10th Standard Parallel, we are willing to sell that but we want to have something to say about it and we want it to be done exactly as we say it and after we have said it we do not want it to be changed some other way. Now you will see that this is done in the way that we want it and then we will give you this land and [9] make this treaty with a good heart. If this is not done we will not do anything until they do as we say.

Now in regard to the grazing permit we want the Commissioner and Secretary to see that those cattle are kept off the reservation. Our people cannot raise their cattle when there are so many of these foreign cattle here. We want this grazing permit business to be cut out and you will tell our Great Father this.

High Pipe:

Now my friend, I am not going to talk to you. I am going to talk to the Indians. (High Pipe then addressed the Indians)

Hollow Horn Bear:

There is another thing that I wanted to mention. About the surplus money that is coming from the Gregory County lands. Some of our people want cattle and some of them want cash. I think it could be arranged for those that want cattle to get cattle and those that want money to get their money.

David Dorion:

Now my friend, the Oak Creek people and some others of the Butte Creek district have considered the question that you put before them and they have told me to come here and tell you what they have said. These people are suffering a good deal with regard to their allotments. Some of them have been making mistakes and some of them have sold their lands. These people want to do something so that they will make their complaints. I will tell you one by one. The heads of families should have all the money to which they are entitled paid to them in full. Those persons that are now eighteen years of age should have the same benefits that those who were eighteen years of age at the time of the Crook Treaty. [10] They should also get the allotment payment. When we sell this land we do not want any of it to be sold as school land but it shall be sold the same as any other land. We want to say something in regard to the grazing permit. We do not like that. There are many people in the Butte Creek district that do not want those cattle on the reservation but they want the surplus money that is left from the sale of the Gregory County lands so that they will make a better living for themselves and for their children. This is all I want to say.

High Pipe then again addressed the Indians.

Little Grow:

My friend; there is something that I am going to say for the people in regard to this matter. This is what I want to say. The Great Father should appoint two of the Indians here to appraise this land. A man of my age cannot do very much and the Great Father knows this but I do not know why he has held up some of my children's money. There are some old men and women that are old and are not strong and they should not be held the same as the young men. They should not hold their money back. They should give them this money so that they will live better and provide for their children. Some of them have sold their dead children's land. They should have this money paid to them in their hands, because they are not able to do anything else. But if this is the law the Great Father has made for me it is alright. If he enforces that law on me I am not able to make my living. And the old people that live in the district that will be opened will then have something to make their living with and they will build houses and have something to eat.

[11] Sorrel Horse:

My friend, there is something that I want to speak to you. We used to have four chiefs here and some of them are dead but some are living. One of them is Two Strike and the second is He Dog. You say that you want some more of our land. You come from the Great Father's house and you are a wise man and you give us some good words. What I want to say is this. About this land that you have come to ask for we are willing to sell this land and let the white men come and build their houses and raise their crops. We want that money paid to us so that we may be able to buy houses and horses so that we may make our living. If this is the way the Great Father will

do there will not be any hungry people here. I have seen more of my people hungry and starving. My friend this is pretty hard. I suppose you have understood what they have said. I have said to them. This man is going to Washington and he is a good man and he will help us. I have seen my people eat cattle that have been dead for three or four days. They were starving and they had to do this. My friend I have not heard from our chiefs yet. They do not see you yet. These two chiefs can accomplish what you want to do. I want them to say about this land and what they say, it suits me alright.

Inspector McLaughlin:

My friends; I am very pleased to hear you express yourselves the way you have. I am pleased to note the common sense view that so many of you take in regard to the north half of your reservation as contemplated in the Gamble bill. I want to answer some of the statements made by your speakers so that it will be clearly and distinctly understood by you. [12] As to the price of the land which my friend, Hollow Horn Bear, demands \$10.00 per acre for, that is out of the question. It is true that the sale of your Gregory County lands together with the sale of your Tripp County lands have greatly enhanced the value of your other lands. The recent Acts passed by Congress for opening Indian reservations provides for the appraisal of the lands, and it is now the desire of the Commissioner and other officials of the Government that all lands opened for settlement shall be appraised by commissioners. What was known as the Kiowa and Comanche Pasture was opened in this way two years ago. A bill which was passed by Congress last year for the opening of the Fort Peck reservation provided for the opening in this way. The legislation opening Standing Rock and Cheyenne River reservations provides this system and, as I explained to you last

Wednesday, the Gamble bill provides for the opening of your reservation the same way. It provides that, after allotments have been made to all persons entitled thereto, which would include children born up to the completion of allotments, the surplus lands are to be appraised by three men appointed by the President for that purpose. One of these men is to be a member of the tribe. The second a representative of the Indian Bureau at Washington and the third a resident citizen of South Dakota. When these men are appointed they are to meet and appoint one of their number to act as chairman of the commission. This commission will then proceed to examine the land and classify same and appraise the land in 160 acre tracts, which is the area of a homestead entry of a white citizen. This commission will put a price on each 160 acre tract and submit this list to the Secretary of the Interior for his action, and the price fixed by them [13] when approved by the Secretary is the price that the entrymen will have to pay for their homesteads.

My friend, Hollow Horn Bear, also spoke of having the payment made in three years. That my friends would be impossible. Let me explain to you the workings of the government. There are three branches to our government, the executive, legislative and judicial. Congress and the Senate are the legislative branches of our government, and The President is the executive and he executes the laws enacted by Congress through the heads of the respective departments. When Congress enacts legislation it devolves upon The President to execute them through the several departments of the Government. This bill provides for payment in the same way as was done in your Gregory and Tripp County lands. The settler pays one-fifth of the price of the land when he enters it and the other four-fifths is divided in five annual payments. Some of the homesteaders would doubtless be able to

take advantage of the law which provides that when a settler has lived on his land for fourteen months continuously he has the privilege of paying in full and receive his patent. But many of the settlers will not have the money to take advantage of this law, and if they cannot pay out sooner they have the full five year period to make their payments.

As I stated to you in our first council, and all of you in that council fully understood me, the law, as defined by the Supreme Court, vests in Congress the power to "open" Indian reservations without consulting the Indians, but the Secretary of the Interior, Commissioner of Indian Affairs and other departmental officials, are opposed to such action without the Indians being fully advised of the proposed legislation, and this is why I have been sent here to explain to you people what is contemplated by the Gamble [14] bill, which I explained to you last Wednesday. Since our meeting of last Wednesday I have given this matter a great deal of study and thought, and have concluded that the tract north of the 10th Standard Parallel approximates about twenty-eight townships of land or about 645,000 acres. The two eastern tiers of townships in ranges twenty-six and twenty-seven, about 11 townships, contains about 253,000 acres, and the report on the Gamble bill, which includes both of these tracts, states that there are about 900,000 acres involved in the proposed opening. Upon examining the plans in the Allotting Agent's office, I find that the greater part of the lands in the north tract will be allotted when the selections already made have been allotted, thus covering about three-fourths of it or about 483,000 acres, which exclusive of the school sections will leave about 125,400 acres or about 780 homesteads of 160 acres each. You people are taking the more desirable lands in that part and this proposed opening will greatly

enhance the values of your land. You can readily see what the opening of Gregory and Tripp Counties has done for you. There is a sale of inherited land today in the office and I am greatly pleased to see the large number of buyers and the enormous prices that your lands are bringing. The opening of that part of your reservation will not only increase the value of the lands in that tract, but will also add a great deal to the value of the lands in your diminished reservation. There is some talk of a railroad coming west through Tripp County to the western boundary of that county, during the coming summer. I have no personal knowledge of such myself, but most every person in this section is speaking of it and expecting it, and with the opening provided by this bill, I have little doubt but that the railroad will go farther west in the near future. Should this [15] railroad come through, it will provide for you a market for your corn, hay, oats, cattle and whatever you will produce. It means that you will be able to get better prices for your products, for it will bring markets right to your doors. I am very much pleased to find the sentiment prevailing among you so favorable to opening a part of your reservation and especially so favorably thought of by the younger men. At the time of our agreements of 1903 and 1907 you were very reluctant to give up any of your land, but I perceive that you now fully appreciate the benefits you have derived from those openings. At one time I was a firm believer of keeping Indian reservations for the Indians themselves and the keeping out of white men except those attached to the agency. But I have changed my views in that respect, by observing that the sooner the Indian is gotten alongside of the white man, the sooner a material benefit is realized by him, as mixing with white men the Indian becomes more self reliant and industrious, thus profiting by the example of his industrious white neighbor.

In regard to those two tiers of townships in the eastern part of Meyer County I will say that the Secretary of the Interior and Commissioner of Indian Affairs do not favor the opening of that strip and will doubtless endeavor to have that part eliminated from the Gamble bill, but they will doubtless favor the opening of the tract lying north of the 10th Standard Parallel, and if opened to settlement, it will be appraised by a commission of three members, as I have heretofore explained, so that you will receive the price placed upon it at the time of the appraisement. I am not here to ask you to touch the pen or make any agreement at this time. This requirement has been discontinued since the Supreme Court defined the law that Congress had the power to open any Indian reservation [16] without the Indians' consent. But the President and the Secretary of the Interior and other departmental officials are opposed to any legislation unfair to the Indians being enacted and they will protest your interests, both as to the price of your land and the conditions of payment.

In regard to Section 17 of the Act of March 2, 1889, which provides for certain benefits for those who are 18 years of age and over at the date of The President's order directing allotments to be made, you are advised that the order for allotments on this reservation was dated June 22, 1893 and the Act of March 2, 1889, under which your allotments are made, provides that those 18 years old or over at the date of the President's order shall receive certain benefits. From this you will see that all the Secretary can do is to follow the law as it was enacted by Congress.

Another question which you brought up was in regard to the permit system for cattle grazing on your reservation. That is a matter not within my jurisdiction at this time. But in talking with your agent in reference to this, I

find that you have been deriving quite an annual revenue from the proceeds of this grazing system, about \$25,000 a year, or about \$5.00 per capita annually for several years past. With your Tripp County lands opened your pasturage is diminished but you will still have a large area in Meyer County. This bill cannot be enacted before the next session of Congress and not likely to become a law before next April or May and it would be six months later before the tract could be opened, so you will have the proceeds from your grazing permits for this summer and next summer. The land would doubtless not be opened until a year from next fall and you may rest assured that the Secretary of the Interior will see that no trouble comes to you from it and that he will direct [17] only what is for your best interests and welfare.

As I have said before I am very much pleased with the good sense displayed as expressed today by your speakers in your council. I hope that each and all of you fully understand that Congress having the power to open any Indian reservation can do so without the consent of the Indians or the concurrence of the Secretary of the Interior or other departmental official, and that should such legislation be enacted it would be the duty of the Secretary to execute the law as passed by Congress. But as the Secretary of the Interior and the Commissioner are opposed to the opening of the two tiers of townships in the eastern part of Meyer County, I am of the opinion that those townships will be dropped from the bill.

This is all that I have to say to you and I want to thank you for the very courteous manner that you have received me and the good sense displayed in the discussion of this question. I will be here for a few days preparing this report which will go to the office of the Secretary of the Interior and thence to the Commissioner's office and a copy will doubtless be sent to the

Senate. Whatever you have spoken here will appear in the minutes and read there and they will thus know your wishes. Should any of you wish to see me again in regard to this matter before I leave, I shall be glad to talk the matter over with you.

High Pipe:

My friend; We are Indians and this is our reservation for it belongs to us and we love it. We do not want to part with it for it belongs to us and to our children. I was a scout in the Great Father's company and I was a good soldier too. At that time they told me that the Indian should sleep sound for he was [18] in his own land and that he should be a good soldier. I want to tell you that this land belongs to us and if the Great Father wants to make a law that will take away this land from us, of course he can do it but we will have nothing to say about that. If he can make that law I want him to do it. This land belongs to us and we have explained it to you according our treaties. You have come here a good many times before and if the Great Father wants to make that law to take away our land why did you not stay at home.

Turning Bear:

My friend, this is the fourth time that we see you. Look at me. I am one of your treaty men. I have honored the Great Father and I am one that has always worked for the Great Father. Whenever there has been trouble and it was smoky, the agent sends me to get the people that are making trouble and I get them. I have helped the Great Father in every way that I could. But now I do not think that this law that he is going to make is good. He wants to take our land without making a treaty with us. This is what I do not believe in. We want you to go back to the Great Father and tell him that this land is ours and if we do not get what we want we will not touch the pen or make the treaty.

Dog Trail:

My friend I want to tell you something and I want you to listen. The Great Father says that the Indian and the white man should be raised together on that land. The Great Fathers says that it will be better for the Indian when the white man comes to live among us. I do not believe this. The Indian is better among himself. I do not believe the treaties that have been made. The only one that I believe in is the Black Hills Treaty.

[19] Inspector McLaughlin:

My friends, I am not suprised to hear the older men of the reservation express themselves as they have for I know that reservations are very dear to the hearts of the old Indians, and that they are very reluctant to part with any of their lands. But you must take into consideration that the white men are becoming very numerous and their families increasing and it is the aim of the Government to provide homes for them. The population of this country is increasing very rapidly and the Government needs all unoccupied lands upon which incoming settlers may make a living. Every Congressman and Senator is being constantly importuned by their constituents to open the surplus lands of Indian reservations. They are being importuned to open even the forest reserves and other Government reserves and I do not believe that there will be any surplus Indian lands in the United States ten years from now. Nearly all of you have allotments and each of you have enough land to make a good living from. And the time is coming, and will soon arrive, when you will be thrown upon your own resources to make your living alongside the white man. The lands that you are selling now are bringing you a good price. You have on deposit over \$400,000 from the proceeds of the sale of Gregory County lands, and the recent opening of Tripp County will increase the values of your lands ten

fold in the diminished part of your reservation. I know it is very difficult for the older Indians to understand that they must part with their surplus lands, and for that reason I am very much pleased to see the sentiment in this respect which prevails among the younger men as evidenced here in our councils.

All that you have said has been taken down by the stenographer and the minutes of our council will go forward with my [20] report to the Secretary of the Interior, with reference to the purpose opening, and in which I will mention certain conditions existing on your reservation as observed by me during my past two weeks sojourn here, and you may rest assured that the Secretary of the Interior and the Commissioner of Indian Affairs will do what is just and best for each and all of you.

(Council then adjourned at 4:14 P.M., but Inspector having told the Indians, prior to adjournment, that any of them desiring to see him in relation to the matter could call upon him at any time while he remained at the Agency, whereupon a party of young men met him by appointment at 7:00 P.M., and the following is a transcript of the stenographic notes thereof.)

Alex Desersa: (41 years of age.)

My friend, we have been having councils for several days and we are pretty tired but I will say a few things to you. Our grand fathers and our fathers have their customs and their way of living and we have followed those customs and we know what the results are. We have found that those customs were alright a number of years ago but they are not any good any more. Many times our grand fathers and our fathers and their children have been hungry and starving and we do not want to follow in their footsteps, for we do not want our children to be hungry and starving. Now I wish to say a few words in regard to that portion of land that will be opened

according to that bill which you have presented to us for discussion. All of us people that live in the Butte Creek district will be included in that part of the land that will be opened up. We know that when this is done we will have many white men as neighbors and it will become necessary for us to do as they do or we will not be able to make living for [21] our families. We will have to work or our children will starve to death in the future. We are willing for the white man to come in among us so that that we may be able to learn from him his methods of living and his ways of earning and we wish to follow his example. We want to raise the same crips that this white man does. Our children are not attending schools and when they grow older they will have some eduction so that when the time comes for them to go to work they will be prepared to make their living with the white men. I want to tell you another thing so that when you go back to Washington you will tell the Great Father what we need to prepare ourselves to compete with the white man. We are organizing an Agricultural Association in the Butte Creek district and we have now over forty members. The purpose of this association is to farm their lands and raise stock, and dispose of what products they have raised on their farms. This association was suggested to us by Inspector Phillips and we are trying to follow his advice. Now what we want you to report is this. When we have started this association we want the Department to help us a little to make it a success. Our delegation that went to Washington asked that the surplus Gregory County monies be expended for the purchase of cattle. Now that may be alright for some of them but we want this money to be given to us in cash or that the Department buy farming implements for us to use. We want to get started in this work so that when the time comes we will be able to work right alongside of the

white man. We want you to tell the Great Father that we people that are living in the district to be opened are in favor of it. We are also satisfied to have the three men appraise this land and we know that we will get the best price for it.

[22] William Flood: (28 years of age.)

I would like to say something. I wish to say that there is something that I am ashamed of my manhood. I have lived like the rest of the Indians although I have been to school. Whenever you have come here you have had an interpreter who has done most of your interpreting. He is now dead. That was my father, Thomas Flood. He was a bright man and he followed the ways of the white man and always earned a good living. Now I have turned about and I am going to use my full manhood. I know now that the way we have been living is not the best way so I will turn about and do what the white man does and make my own living for my family. I am in that part of the land that will be opened and I am in favor of it for I think that it will be best for us. The white man will come among us and he will be a good example for us. He will show us the way to get the best from our farms. I want to tell you something about that agricultural association that Alex Desersa spoke about. This association that we are organizing is what I believe will do more for us in teaching us how to make our living than any other way. I hope that there will soon be a lot of such societies on the reservation. We of the younger men see that the way of the old Indian is past and that we must do something if we do not want to starve. Our children are growing up and we want them to be able to make their living alongside of the white man. I want to be an example for my children so that when they grow up they will be able to make their living and not sit around and wait for ration day. We want our our agent to watch our

association and report to the Great Father if we are doing any good and we would like to have the department help us a little in our efforts.

[23] Henry Stranger Horse: (37 years of age.)

I want to say a few things for myself. I am one of the young men that have been in favor of this opening of the north part of our reservation. We have been discussing this question among ourselves in our councils. And I want to tell you that all the people from the Butte Creek district are in favor of this land. We want the white man to come among us and show us the way to civilization. When we had the council the other day I spoke to them and I told them that I was sent away to school and that when I came back and tried to do what I had learned at that school they laughed at me and soon I was like one of them. I wore my blanket with them. But I have found that I was often hungry and my family was starving so I told them that I was going to throw off my blanket and dress up again like a white man and go to work and make us of the learning that I have. I do not want my children to be hungry and starving like I have. I want them to be able to make their living. Some of the Indians have been making complaints about selling this land. They do not know what is good for them. I told them in what way we would have more power than we have now. They want to be like white men and have the right to vote and in this way they will have more power. Of course there are many things that we have to learn before we can become like white men. The first thing we have to learn is to be able to make our living for ourselves and we will never do so as long as we keep together as Indians. There is another thing that I want to say. In regard to the traders' stores. They charge high prices for the things that they sell. Now when this tract is opened there will be many stores and we will be able to buy a great deal more cheaper than

what we are doing. They will then get full value of their money. This land will be [24] thrown open and many white men will come in there and they will show us the way to make a living and we will be able to work for them. They will raise gardens and other crops and they will be a good example for us. I think we have started on the right way when we organized that agricultural association. In this way we will help one another and when one cannot do anything for himself the others will help him. And we want you to tell the Great Father of this association and we want the Department to help us in giving some farming implements. We want that surplus Gregory County money to be given to us so that we may buy these farming implements. Many of our people are selling their inherited land. I think that is would be best if they should get that money so that they will live and help themselves. A good many of our men drink whiskey. This is not good for them. Those who have entered our association have said that they will not use it. We want to be good examples to the other Indians so that they will see that our way of living is the best way. That is all I want to say.

George Whirlwind Soldier:

I want to say a few words to you. These young men have talked to you and have told you what they wish to do. I have been working for the Great Father as assistant farmer for \$10 a month for the past thirteen years. The salary was small but the knowledge that I have learned is very valuable to me. I am now able to go and make my living anywhere. I take whatever work there comes before me and the people that I live among abuse me for working but I think that as they do not earn my living for me I do not bother with what they say. I am in favor of opening that part of our reservation as it will bring the Indians in close contact with the whites and this will give

them good examples. [25] For my part I will be glad to see the white man come here to make his home and cultivate this land for we will then be able to see how he does it and we will learn from him. When the white settlers comes the first thing that he does is to build his house and then he goes to work right away and starts farming. This will be a good example for our Indians. It will be a great benefit to them. It will show them how to make their own living.

Joseph Little Brave:

Our Black Pipe people have met in their council and they have appointed three of us to come to the council here and tell you what we feel about the opening of this land. But in the council there were so many of them that wanted to speak and all they did was to abuse one another that I thought I would tell you of our wishes after they were through. The Black Pipe people are in favor of this opening of the north part of our reservation. The greater part of the Black Pipe people live in that portion to be opened. They want the white man to come in and live among them so that they will follow his example and know how to make their living. Even some of them spoke that they wished the entire reservation be thrown open for settlement. We want to live like white men. The day of the Indian is past. But there is one thing that they told me to tell you and that is this. They want the Great Father to give them their minor children's monies so that they will be able to build better houses to live in and to buy horses and farming implements. They also say that when they sell their inherited land they should be paid the money instead of having it held for them. In this way they will be able to put the money in the bank that they do not need and they will use [26] the balance of building their houses and buying what things they need. The Black Pipe people are industrious

and they are raising crops and have many cattle and this is the reason that they wish the white man to come and live among them so that they will follow their example. I want you to tell the Great Father of our wishes when you get to Washington and we want him to help us.

Andrew Long Warrior:

The Black Pipe people have come here before you to tell you what they want. I am not going to talk about the old treaties for that is past. I am going to talk about the one that we are going to have. We are willing to have the north part of our reservation opened up. We will be glad to see the white man come among us and farm this land so that we will know how this is done. He will raise crops and he will have cattle and we will learn from him how these things are done. Most of our people are living in the part that will be opened for settlement and they are glad to see it so. But there is one thing that I want to tell you. The Great Father should allow us to have our minor children's money. We need this money so that we may be able to improve our houses and buy farming implements. Also those children who have become eighteen years of age, they should get what money is coming to them. Also the money that we are getting from the sale of our inherited land. We should have that. It should be paid to us directly so that it will do us some good. As it is now it is put away and we have been getting but very little of it and of course it has not done us much good. We want to get all of it and use it. We want our words to go before the Great Father and to the Senate so that they will know what we feel about this matter. That is all [27] I want to say.

James Stands for them:

My friend, I have not much to say except that I have not much to say except that I and the others fully agree to what these young men have told you and we want you

to go to Washington and present our case for us. You will tell them that we need our minor children's monies so that we may build better houses and raise crops on our farms. This is what the Black Pipe people want.

[#35]

(Enactment of S. 183, 61st Cong. 2d Sess.)

[Act of May 30, 1910 ch. 260, 36 Stat. 448]

CHAP. 260.—An Act To authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh, south of the White River, and being described and bounded as follows: Beginning at a point on the third guide meridian west where the township line between townships thirty-nine and forty intersects the same, thence north along said guide meridian to the middle of the channel of White River, thence west along the middle of the main channel of White River to the point of intersection with the line dividing the Rosebud and the Pine Ridge Indian reservations, thence south along the boundary line between said reservations to the township line separating townships thirty-nine and forty, thence east along said township line to the place of beginning, except such portions thereof as have been or may be hereafter allotted to Indians or otherwise reserved, and except lands classified as timber lands: *Provided*, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for

sale, relinquish same and select allotments in lieu thereof on the diminished reservation: *And provided further*, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: *And provided further*, That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other authority, of any religious organization heretofore engaged in mission or school work on said reservation for such lands thereon (not included in any townsite hereinafter provided for) as have heretofore been set apart to such organization for mission or school purposes.

SEC. 2. That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: *Provided*, That prior to said proclamation the allotments within the portion of the said Rosebud Reservation to be disposed of as prescribed herein shall have been completed: *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Phillippine insurrection as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes as amended by the Act of March first, nineteen hundred and one, shall not be abridged.

SEC. 3. That before any of the land is disposed of, as hereinafter provided, and before the State of South Dakota shall be permitted to select or locate any lands to which it may be entitled by reason of the loss of sections sixteen or thirty-six, or any portions thereof, by reason of allotments thereof to any Indian or Indians, the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe; and he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than ten acres in any town-site, and patents shall be issued for the lands so set apart and reserved for school, park, and other public purposes to the municipality legally charged with the care and custody of lands donated for such purposes. The purchase price of all town lots sold in town-sites, as hereinafter provided, shall be paid at such time and in such installments as the Secretary of the Interior may direct, and he shall cause not more than twenty per centum of the net proceeds arising from such sales to be set apart and expended under his direction in the construction of schoolhouses or other public buildings or in improvements within the town-sites in which such lots are located. The net proceeds derived from the sale of such lots and lands within the town-sites as aforesaid, less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements, shall be credited to the Indians, as hereinafter provided.

SEC. 4. That the price of said lands entered as homesteads under the provisions of this Act shall be fixed by appraisement, as herein provided. The Presi-

dent shall appoint a commission to consist of three persons to classify, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections sixteen and thirty-six or other lands which may be selected in lieu thereof by the State of South Dakota, in each of said townships, said commission to be constituted as follows: One resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians. That within twenty days after their appointment the said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect, classify, and appraise, in one hundred and sixty acre tracts each, all of the remaining unallotted lands embraced within that portion of the reservation described in section one of this Act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral and timber lands shall not be appraised: *Provided*, That timber lands may be classified without regard to acreage: *And provided further*, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians. That said commissioners shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection, classification and appraisement of said lands, and necessary expenses exclusive of subsistence to be approved by the Secretary of the Interior, such inspection, classification and appraisement

to be completed within six months from the date of organization of said commission.

SEC. 5. That said commission shall be governed by regulations prescribed by the Secretary of the Interior; and after the completion of the classification and appraisement of all of said lands the same shall be subject to the approval of the Secretary of the Interior.

SEC. 6. That the price of said lands disposed of under the homestead laws shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments, to be paid in two, three, four, five, and six years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be again subject to entry under the provisions of the homestead law at the appraised price thereof: *And provided*, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the appraised price, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands

entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this Act.

SEC. 7. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums to which the said tribe may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization.

SEC. 8. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this Act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose, and in case any of said sections, or parts thereof, are lost to said State by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section one of this Act, to locate other lands not otherwise appropriated, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement: *Provided*, That in any event not more than two sections shall be granted to

the State in any one township, and lands must be selected in lieu of sections sixteen or thirty-six, or both, or any part thereof, within the township in which the loss occurs, except in any township where there may not be two sections of unallotted lands, in which event whatever is required to make two sections may be selected in any adjoining township.

SEC. 9. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of not more than one hundred and twenty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section eight of this Act. And there is hereby appropriated the further sum of thirty-five thousand dollars, or so much thereof as may be necessary, for the purpose of making the appraisal and classification provided for herein: *Provided*, That the latter appropriation, or any further appropriation hereafter made for the purpose of carrying out the provisions of this Act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribe.

SEC. 10. That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, granted to the State of South Dakota, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

SEC. 11. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent in each township, or to dispose of said land except as provided

herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: *Provided*, That nothing in this Act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act.

Approved, May 30, 1910.

[#35A]

(Legislative History of S. 183)

[45 Cong. Rec. 295 (1909-1910)]

Rosebud Reservation: bills for sale and disposition of surplus and unallotted lands in (see bills S. 183; H. R. 12437).

[45 Cong. Rec. 2 (1909-1910)]

S. 183—To authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Reported with amendments (S. Report 68) 668.—Debated 905, 958, 1012, 1013, 1065-1071, 1073, 1075.—Passed Senate 1075.—Referred to House Committee on Indian Affairs 1215.—Reported with amendment (H. R. Report 429) 1752.—Debated 5456-5473.—Amended and passed House 5473.—Senate disagrees to House amendments and asks for a conference 5483.—House insists on its amendments and agrees to conference 5538.—Conference appointed 5483, 5538.—Conference report made and agreed to in Senate 6324-6326.—Conference report (H. R. Report 1368) made in House 6379-6381.—Conference report debated and agreed to in House 6415, 6416, 6436, 6437.—Examined and signed 6496, 6517.—Approved by the President [Public, No. 194] 7129.

[45 Cong. Rec. 668 (1910)]

Mr. GAMBLE, from the Committee on Indian Affairs, to whom were referred the following bills, reported them severally with amendments and submitted reports thereon:

A bill (S. 183) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect (Report No. 68); and

[45 Cong. Rec. 905 (1910)]

BILLS PASSED OVER.

* * *

The Secretary. A bill (S. 183) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect;

[45 Cong. Rec. 958 (1910)]

LANDS IN ROSEBUD INDIAN RESERVATION.

The bill (S. 183) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South

Dakota, and making appropriation and provision to carry the same into effect, was announced as the next business in order.

Mr. SMOOT. Let the bill go over.

The PRESIDING OFFICER. Under objection, the bill will be passed over.

[45 Cong. Rec. 1012-1013 (1910)]

LANDS IN ROSEBUD INDIAN RESERVATION.

The bill (S. 183) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, was announced as the next business in order.

Mr. PENROSE. I ask that the bill may go over, and also the next one on the calendar.

Mr. GAMBLE. Mr. President, this is the fourth time this bill has been reached in the regular call of the calendar. When it was first reached there were certain amendments to the bill, the report was not here, and it was necessarily passed over. Yesterday and the day before I was unavoidably absent from the Senate and could not be here.

This and the succeeding bill are matters of importance to the people of our State and to the people of the United States. It has been favorably recommended by the department. The bill, after it was introduced, was submitted to the Indian tribe, and it is satisfactory to them. It is of the highest importance, we feel, not only to the Indian tribe but to the people of the State,

and especially of that section of the State, that the bill shall be considered.

Mr. PENROSE. I made the request at the suggestion of several Senators who are unable to be in the Chamber. I shall not persist in my opposition if the Senator will let the bill go over to-day, and when it comes up to-morrow I will not oppose it. Let the next bill on the calendar also go over.

The VICE-PRESIDENT. The bill will go over without prejudice.

[45 Cong. Rec. 1065-1071 (1910)]

ROSEBUD INDIAN RESERVATION LANDS.

The bill (S. 183) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect, was considered as in Committee of the Whole.

The VICE-PRESIDENT. The bill has been read, but there are amendments reported from the Committee on Indian Affairs.

Mr. KEAN. Is this the bill containing an appropriation of \$415,000?

Mr. GAMBLE. No; this is not the bill which was under consideration on two occasions at the present session. This is another bill, but I do not understand that it has been read. The bill to which the Senator from New Jersey calls attention was read, but this bill has not been read.

The VICE-PRESIDENT. The Senator from South Dakota is correct in his statement. The bill will be read.

The Secretary read the bill, which had been reported from the Committee on Indian Affairs with Amendments.

The first amendment of the Committee on Indian Affairs was, in section 1, page 1, line 7, after the word "point." to strike out "on the state line between the States of South Dakota and Nebraska where range line 25 west of the sixth principal meridian intersects the same, thence running west on said state line to a point where the range line between ranges 26 and 27 intersect the said state line, thence north on said range line between ranges 26 and 27 to a point where the same intersects the tenth standard parallel north, thence west on said tenth standard parallel north to a point where the same intersects the western boundary line of the Rosebud Indian Reservation, thence north on the western boundary line of the Rosebud Indian Reservation to a point in the center of the main channel of the White River, thence easterly along the center of the main channel of said White River to a point where range line 25 west of the sixth principal meridian intersects the same, thence south on said range line 25 west of the sixth principal meridian," and insert "on the third guide meridian, west, where the township line between townships 39 and 40 intersects the same; thence running west on said township line to a point where the same intersects the boundary line between the Rosebud and Pine Ridge Indian reservations; thence north on the boundary line between said reservations to a point where the same intersects the center of the main channel of the White River; thence in an easterly direction along the center of the main channel of said White River to a point where the third guide meridian,

west, intersects the same; thence south on said third guide meridian, west," so as to read:

That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation in the State of South Dakota lying and being within the following described boundaries, to wit: Commencing at a point on the third guide meridian, west, where the township line between townships 39 and 40 intersects the same; thence running west on said township line to a point where the same intersects the boundary line between the Rosebud and Pine Ridge Indian reservations; thence north on the boundary line between said reservations to a point where the same intersects the center of the main channel of the White River; thence in an easterly direction along the center of the main channel of said White River to a point where the third guide meridian, west, intersects the same; thence south on said third guide meridian, west, to the place of beginning, etc.

The amendment was agreed to.

The next amendment was, in section 3, page 5, line 6, after the word "the," to strike out "Indian Bureau" and insert "Interior Department;" in line 11, after the word "empowered." to insert "to select such clerks and assistants at such compensation;" in line 16, after the word "within," to strike out "each" and insert "that portion of said;" in line 22, before the word "land," to insert "and timber;" in the same line, after the word "appraised," to insert "*Provided*, That the timber lands shall be classified without regard to acreage: *And provided further*, That all land classified as timber lands shall be reserved for the use of the Rosebud Indians;" and on page 6, after the word "expenses," at the end

of line 3, to insert "exclusive of subsistence," so as to make the section read:

SEC. 3. That the price of said lands entered as homesteads, under the provisions of this act shall be fixed by appraisement as herein provided. The President of the United States shall appoint a commission to consist of three persons to inspect, appraise, and value all of said lands that shall not have been allotted, in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections 16 and 36 in each of said townships, said commission to be constituted as follows: One resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians. That within twenty days after their appointment the said commissioners shall meet and organize by the election of one of their number as chairman. The said commission is hereby empowered to select such clerks and assistants at such compensation as the Secretary of the Interior may approve. The said commissioners shall then proceed to personally inspect, classify, and appraise, in 160-acre tracts each, all of the remaining lands embraced within that portion of said reservation as described in section 1 of this act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, the mineral and timber land not to be appraised: *Provided*, That the timber lands shall be classified without regard to acreage: *And provided further*, That all land classified as timber lands shall be reserved for the use of the Rosebud Indians. That said commis-

sioners shall be paid a salary of not to exceed \$10 per day each while actually employed in the inspection and classification of said lands, and necessary expenses, exclusive of subsistence, to be approved by the Secretary of the Interior; such inspection and classification to be completed within six months from the date of organization of said commission. That when said commission shall have completed the classification and appraisement of all of said lands the same shall be subject to the approval of the Secretary of Interior.

The amendment was agreed to.

The next amendment was, in section 4, page 7, line 20, after the word "prescribe," to insert "and patents therefor shall be issued to the purchasers," so as to read:

And it is further provided, That any lands remaining unsold after said lands have been open to entry for seven years may be sold to the highest bidder for cash without regard to the prescribed price thereof fixed under the provisions of this act, under such rules and regulations as the Secretary of the Interior may prescribe, and patents therefor shall be issued to the purchasers.

The amendment was agreed to.

The next amendment was, in section 5, page 8, line 3, after the words "Revised Statutes," to insert "and he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than 10 acres in any town site, and to issue patents for such reserved tracts to the municipality legally charged with the care and custody of lands donated for such purposes. And the Secretary of the Interior shall cause not more than 20 per cent of the net proceeds arising from such sales to be set apart and expended under his direction in

aiding the construction of schoolhouses or other buildings or improvements in the town sites in which such lots are located;" and in line 14, after the word "lands," to insert "less the amount set aside to aid in the construction of schoolhouses or other buildings or improvements," so as to make the section read:

SEC. 5. That the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe, in accordance with section 2381 of the United States Revised Statutes; and he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than 10 acres in any town site, and to issue patents for such reserved tracts to the municipality legally charged with the care and custody of lands donated for such purposes. And the Secretary of the Interior shall cause not more than 20 per cent of the net proceeds arising from such sales to be set apart and expended under his direction in aiding the construction of schoolhouses or other buildings or improvements in the town sites in which such lots are located. The net proceeds derived from the sale of such lands, less the amount set aside to aid in the construction of schoolhouses or other buildings or improvements, shall be credited to the Indians as hereinafter provided.

The amendment was agreed to.

The next amendment was, in section 7, page 9, line 8, before the word "cents," to strike out "one dollar and twenty-five" and insert "two dollars and fifty;" in line 14, after the word "not," to strike out "occupied"

and insert "otherwise appropriated;" and in line 19, after the word "settlement," to insert the following proviso.

Provided further, That in any event not more than two sections shall be granted to the State in any one township, and lands must be selected in lieu of sections 16 or 36, or any part thereof, within the township in which the loss occurs.

So as to make the section read:

SEC. 7. That sections 16 and 36 of the land in each township within the tract described in section 1 of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at \$2.50 per acre, and the same are hereby granted to the State of South Dakota for such purpose, and in case any of said sections, or parts thereof, are lost to said State by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section 1 of this act, to locate other lands not otherwise appropriated, not exceeding two sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement: *Provided further,* That in any event not more than two sections shall be granted to the State in any one township, and lands must be selected in lieu of sections 16 or 36, or any part thereof, within the township in which the loss occurs.

The amendment was agreed to.

The next amendment was, in section 8, page 10, line 2, before the word "thousand," to strike out "sixty-

five" and insert "one hundred and twenty-five;" and in line 6, before the word "thousand," to strike out "twenty-five" and insert "thirty-five," so as to read:

SEC. 8. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of not more than \$125,000, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section 7 of this act. And there is hereby appropriated the further sum of \$35,000, or so much thereof as may be necessary, for the purpose of making the appraisal and classification and allotments provided for herein.

The amendment was agreed to.

The next amendment was, on page 11, after line 3, to insert as a new section the following:

SEC. 10. That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the State, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

The amendment was agreed to.

Mr. GORE. Mr. President, I offer an amendment to section 2 of the bill. I hope the Senator from South Dakota [Mr. Gamble] will accept the amendment.

The VICE-PRESIDENT. The amendment proposed by the Senator from Oklahoma will be stated.

The Secretary. It is proposed to add at the close of section 2 the following words:

Provided, That applicants to enter said lands shall be allowed to forward their applications by registered mail to the authorities of the local land

office under such rules and regulations as the Secretary of the Interior may prescribe.

Mr. GORE. Mr. President, I hope the Senator from South Dakota will find himself in a situation to accept this amendment. I offer it for this reason: I know something of these openings, especially when lands are opened by lottery. I went to Oklahoma during one of these lotteries. If everybody who attended the drawing should be successful, of course there would be no complaint; but from 10 to 20 people are compelled to attend to every one who is successful in the lottery. It is a great and unnecessary inconvenience, and besides it is an enormous expense; it subserves no public purpose; and it practically disqualifies everybody who is not able to make the trip to the local land office. For this reason, I hope the amendment will be adopted.

Mr. GAMBLE. Mr. President, a different method of land openings has been adopted during recent years, requiring registration at adjacent points to the lands to be opened. This bill follows the usual course in all the land-opening bills. The lands are to be opened by proclamation of the President under such rules and regulations as the Secretary of the Interior may prescribe. It is the judgment of the department that this manner of opening is wise and safe; that it leads to good results, and avoids the difficulties, the dangers, and the violent acts that have heretofore occurred in land openings without these restrictions.

I doubt whether the amendment offered by the Senator from Oklahoma [Mr. Gore] would bring any desirable result. If applications could be filed by registered mail at local land offices, the land office would be simply overwhelmed by applications from all over the United States; they would be limitless and put a burden upon the department that it seems to me

would be unnecessary. Of course I should be glad to comply with the Senator's wishes, but as these rules have been adopted, have been followed, and have worked well, I do not believe it would be wise to hastily invade the regular procedure by adopting such a proposition without consideration at this time. I therefore do not feel that I ought to accept the amendment.

Mr. GORE rose.

Mr. BURKETT. Mr. President, I do not want to interrupt the Senator from Oklahoma [Mr. Gore] for more than a few moments in anything that he may have to say on this subject, but I do want to call the attention of the Senator from South Dakota [Mr. Gamble] to the spectacle that we had out there with reference to the opening of some other reservations. I think it has been called to his attention how undesirable and how unsatisfactory the methods have been which have been recently followed. I do not know that we can add anything to this bill; I am not certain that the amendment of the Senator from Oklahoma, if added, would relieve the situation; but I am very well satisfied that there ought not to be any more land openings following the methods which have been pursued in our section of the country on the last two or three occasions.

Mr. GAMBLE. Mr. President, I might call the attention of the Senator from Nebraska [Mr. Burkett] to the last land opening we had in our State. That was the opening of the lands of the Cheyenne and Standing Rock Indian reservations. I do not recall just exactly the acreage to be opened, but at least, including the Indian allotments, it aggregated something like 3,000,000 acres. We have had some experience, Mr. President, in the manner of these openings in that section of the country. There were about 80,000, I

think, who registered, and I believe there were but ten to twelve thousand quarter sections of land to be filed upon. The first experience we had in our State following the one I think in Oklahoma, was at the opening of the lands in Gregory County. I think between four and five hundred thousand acres were to be opened. Something like 107,000 people registered, and only a limited number of homesteads were available. Following that an opening was had in Tripp County, adjacent to these lands, and although in proportion the lands were very much greater in acreage than in the prior opening, there were a very limited number in comparison who registered. Then, in the case to which I have referred, the Cheyenne and Standing Rock, the number was still less. So that I doubt the efficacy of the remedy proposed by the Senator from Oklahoma [Mr. Gore]. If the Senator from Nebraska [Mr. Burkett] would take the matter up with the President and the Secretary of the Interior, I think that would be the better policy to be followed.

Mr. BURKETT. Mr. President, I am not going to reiterate here the inconveniences to those who go to make these registrations; in fact, I have never had so much concern about them or as to how many have gone to attend them, in proportion to the number who draw prizes. But there is the other phase of it, and that is requiring them to go a long distance to register. I have no doubt that prevents a large number of people from undertaking to get homesteads who are most entitled to have them. I recall that during the last registration I was frequently on the trains in that portion of the State—and, if I remember rightly, I met the Senator up in that section on one occasion—when they were running trains in five, six, seven, and eight sections every day. There were estimated to be 5,000

people sleeping on the ground in one of the little towns where the registration was going on. It was impossible for any person getting on a train along the line within a hundred miles of one of these registration places to get a seat in a car.

That inconvenience, of course, argues nothing with reference to the merits of the system or otherwise; but here is the difficulty, it seems to me, and here is the thing that is against it: It is only the man who can afford to make the trip out there and pay his expenses who has any chance to get the land. I will say I was in that part of the State every day for a week riding on those trains, my engagements happening to put me just in that part of the State at that time. I talked with those people, and, in my judgment offhand, two-thirds of them were going up there more as a lark than anything else. There were people on their vacations going up to see what was done at a land opening. I know personally that some of them who drew very low numbers—within the first twenty—who did not even go and settle on the land. They did not care that much about it. In short, the people who really ought to have that land as homesteads, under the present registration system, can not go there and get it, as the chances are too small of their getting it to warrant them, with their limited means, in putting out the money to cover the expense.

The person who wants to take a vacation, the person who wants simply to go on a lark, the person who wants to spend a little money, will go there, it does not make any difference if his chance is only one in ten thousand; but the person who wants a homestead, with whom every dollar counts, and who does not want to take that risk without some fair and legitimate expectation or opportunity of winning, will not go out there.

In short, it throws the few people who really need homesteads, who want homesteads, who ought to have homesteads, and for whom the homestead law was made and who do go, in competition with about ten times as many people who have no use for homesteads and who are really almost afraid they will draw homesteads when they go out there and make the registration. There ought to be some way devised by which they would not have to come in competition. For example—

Mr. GAMBLE. Mr. President—

The PRESIDING OFFICER (Mr. Page in the chair). Does the Senator from Nebraska yield to the Senator from South Dakota?

Mr. BURKETT. Let me finish this sentence and then the Senator can have the floor.

I have in mind a bank clerk who lived in a very nice little town in Iowa. That bank clerk was on a vacation and wanted to go somewhere. So he went out there, and drew within the first twenty. He did not want that homestead; he never intended to go out there and make a home, and never would have gone out there; yet, as I have said, he drew within the first twenty. Of course he sold his relinquishment. There were a great many more just like that man, as we know. There was somebody out there who ought to have had that homestead, but, as a matter of fact, by his going, and under that registration system, somebody else who ought to have had it did not get it, and there were many more at home who ought to have gone there who did not go because the expense was too great.

Mr. President, I am just about through. As I have said, I do not know whether the amendment of the Senator from Oklahoma reaches the case. Before we vote on it I am going to have it read again and, as I

understand, the Senator from Oklahoma is going to explain it more at length. I have, however, not any manner of doubt but that of all the different ways that have ever been conceived for opening up reservations, the methods and practices that have been followed within the last two, three, or four years are the most vicious of any that have ever been tried. In my judgment, the old rush system that they had out in Oklahoma was much better than this system. It at least gave every man a chance in physical endurance, and he won if he had physical endurance and physical prowess. The present system does not insure anybody even a chance who really ought to have a homestead. I think, as I have said, it is the most vicious system that has ever been conceived.

Mr. HEYBURN. Mr. President, in connection with the suggestion of the Senator from Nebraska [Mr. Burkett] I would make this statement: The notary fees in the opening of a reservation during this last year in my immediate section of the country, I am told, amounted to more than \$40,000. Every person that registered had to pay a notary fee. That was unfair to those people. Only those whose names are drawn should be required to pay the notary fee. They should be entitled to register, and when the names are drawn, those to whom the land goes should make the declaration then and there and pay the notary fee. There is no sense on earth in having 180,000 people pay notary fees when they are only going to get one chance in eighteen. I merely make the suggestion for what it is worth.

Mr. GAMBLE. Mr. President, I do not want to take the time of the Senate unduly, but in reply to what the Senator from Nebraska [Mr. Burkett] has stated in regard to the recent opening of the Cheyenne and

Standing Rock Indian reservations. I have to say that there were four or five different registration points in the State adjacent to the land to be opened. It was necessary that those who intended to file should go there and register, and, of course, in registering they had to show that they would be competent to file upon the land.

An affidavit has to be made and 25 cents notary fee is charged. This latter statement is in reply to the statement made by the Senator from Idaho [Mr. Heyburn].

Trains were run, accommodations were provided at all of those points, and no 3,000 or 5,000 or any other number of men or women were obliged to sleep out of doors. Registration booths were kept open all night to accommodate all comers. They could come and go at any time of the day or night.

Perhaps this system, Mr. President, is not the best system; perhaps some other and better system can be devised, but this has grown up as a result of what was known as the "sooner rushing," I think, down in Oklahoma and at other places; that is to say, the one who first got upon the land was entitled to file, and there was trouble; there were contests; there was loss of life. In addition to that, it involved the Interior Department in endless litigation and controversy in the establishment of title. So the present system was adopted to avoid the trouble, delay, danger, and expense; and I do not believe that it would be bettered by the amendment proposed by the Senator from Oklahoma.

In reply further to the statement of the Senator from Nebraska that the men and women who are entitled to file upon the land are precluded, I will say that only a limited outlay is required to show their good faith in

making the filings and to show that they are entitled to homesteads. If the registration is thrown open to every citizen of the United States, a limitless number of applications would be filed, and the department would not know whether they were filed in good faith or otherwise. It seems to me it would entirely destroy any possibility of a successful opening and the bringing to those lands of desirable settlers.

Mr. DAVIS. Mr. President, I do not care to speak especially to the amendment offered by the Senator from Oklahoma [Mr. Gore], but at this time I desire to call the attention of the Senate to what I conceive to be two very serious defects in this bill. I am a member of the Committee on Indian Affairs. I raised these objections in the committee and reserved my right to make them on the floor of the Senate.

This bill provides, Mr. President, that the Government shall pay for the opening of this Indian reservation. This bill, together with its companion bill, appropriates something like a quarter of a million dollars of the public funds. I contend, sir, as was contended in the Senate recently by the senior Senator from Massachusetts [Mr. Lodge], that the enabling act between the State of South Dakota and the Government of the United States does not provide, by any fair interpretation of that act or by any interpretation that might be placed upon it by a lawyer who has studied it and given the subject careful consideration, that the Government shall be burdened with this expense. I grant you, sir, that in many instances this practice has grown up in the opening of western lands, but not because the enabling act between those States and the Government provides for it. For one, sir, I am not willing that this bill shall become a law without raising my voice and entering my solemn protest against the

Government being called upon to pay the expense of opening this Indian reservation.

Take the enabling act. I call upon the Senator from South Dakota to point out to the Senate the specific clause, to point to the letter of the law, that authorizes the taking of money from the Public Treasury before you shall enter there and use it for private purposes.

Now sir, there is another very serious defect in this bill. Section 7 provides:

Sec. 7. That sections 16 and 36 of the land in each township within the tract described in section 1 of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at \$2.50 per acre.

I should like to inquire of the Senator from South Dakota if the Government now owns sections 16 and 36? I wait for an answer.

Mr. GAMBLE. The Indians possess the right of occupancy, and, under the law and legislation of Congress, the Government agreed to reserve these lands and to pay for them, not only by law, but under the enabling act admitting the State of South Dakota to the Federal Union.

Mr. DAVIS. I will ask the Senator from South Dakota if the title of sections 16 and 36 is not in the Indians by the terms of the treaty?

Mr. GAMBLE. The right of possession, I presume, is.

Mr. DAVIS. I maintain, Mr. President, that not only the right of possession, but the absolute fee to these lands is to-day in the Indians of South Dakota, where this reservation is proposed to be opened.

Now, sir, the serious objection I raise to this bill is that it provides that the Government shall buy, or that there shall be reserved out of this reservation, sections

16 and 36 for the use of the common-school fund of South Dakota. I am the last man on earth who would raise his voice inimical to the school interest of any State. But, sir, I maintain, with the admission of the Senator from South Dakota, that the Indians own not only, as I say, the right of possession, but the absolute fee to these lands, and for the Government to say that lands which it does not own shall be reserved for common-school purposes is an absolute fraud and a subterfuge; and the further reading of the bill discloses that if these lands are already taken, are already occupied, or have already been entered, then, sir, the provision in the bill is that the school land shall be shifted to other unallotted land.

Ah, sir, I am told that these other unallotted lands are absolutely worthless, absolutely valueless, and the purpose of this bill, as I see it, is to force the Government to pay \$2.50 per acre for this worthless arid land. By whom it is backed I know not. The Senator from South Dakota knows not. I clear him of any sort of imputation. But, sir, there must be behind this some powerful and potent force that would suggest that the Government buy these worthless, arid lands and pay \$2.50 an acre for them and appropriate from the Public Treasury of the United States a quarter of a million dollars in order to do it.

Mr. President, too many scandals have arisen recently with regard to land grabbing in the great Northwest. The history of all that is known to all the Senate. I call upon Senators here, before they invade the Treasury and take from it this large sum of money, to act cautiously, to act prudently, and to see where they are before they vote away the people's money.

Mr. President, I have said this much because I thought it was my duty to raise my voice against what

I believe to be an iniquitous bill, one fraught with much evil, couched, as all such things are couched, under the pretense of the good of the people.

Mr. CRAWFORD. Mr. President, this bill was introduced by my colleague, and he is in charge of it, but it is one of interest to my State, and I think the Senator from Arkansas [Mr. Davis] has great concern over imaginary dangers. I have lived in the West all my life, and I have lived in South Dakota half of my life. It was a Territory when I went there, and almost all of the west half of it was an Indian reservation, occupied by the Sioux Indians.

By treaties negotiated from time to time, and by laws enacted from time to time, the area of lands occupied by the Indians has gradually narrowed to smaller and smaller limits, until now the lands owned by the Indians are comparatively small in quantity. They are not lands which in their possession bring any revenue whatever. They do not cultivate them. There is neither fish nor game upon them. The policy of the Government toward the Indians and toward these lands has changed in more recent years simply in this respect—that the lands be sold and the proceeds made into a trust fund, the principal forever held inviolate and the income from which is devoted to the Indians.

When these lands under this bill and similar bills are thrown open to settlement, the Indian first selects by allotment the portion he is allowed to take upon the abandonment of his tribal relations, and the balance is sold to the settler, who must first make entry and settlement and comply with the provisions of the law and then pay the Government, and the proceeds go into the fund for the Indians.

Sections 16 and 36, to which the Senator refers, are held from the settler and are given to the State to keep

good the pledge made to the State by the Government under the enabling act when the State was admitted into the Union, by which a grant was made to the State for its common schools of sections 16 and 36, whether surveyed or unsurveyed. Our State came into the Union with that grant and that provision in its organic law, and the pledge of the Government in the enabling act was given to the State that it would receive sections 16 and 36 for the benefit of its common schools. So sections 16 and 36 can not in the remotest degree be charged with being a subject for jobbery or speculation or graft, because they are the property of the State, granted for the support of its common schools, and this provision is simply to enable the Government to keep that pledge.

The Senator from Oklahoma [Mr. Gore], I know, had a worthy object in view when he proposed this amendment, but it seems to me it will utterly fail to remedy the trouble which the Senator seeks to correct. It is true that when these proclamations are issued opening lands in the West, under the method that is pursued now, great crowds get on the trains and go long distances, and many of them spend their money, and certain abuses have followed that method. But how would the mere mailing of a registered letter to the representative of the Government on the ground make this matter any better? It seems to me it would make it infinitely worse.

The whole object now—and it is a worthy object, indeed—is that these lands shall be secured to the actual settler, the man who wants them for a permanent home, the man who wants them for his family. But if you give to every person who mails a registered letter to the superintendent in charge of these openings a right to secure a number and have it registered and

drawn in the lottery, instead of having 150,000 persons on the ground drawing numbers you will have perhaps 15,000,000 who had simply paid the expense of registration and mailed a request to be permitted to file, accompanied by some affidavit containing whatever was required; and every person everywhere, no matter whether he was intending to be an actual settler or not, whether his motives were good or bad, whether he was a speculator who after drawing a number would undertake to sell the land to some one the next day, or who would make a filing and then relinquish it to whomsoever would pay him the highest price—every person of that character in the United States by simply mailing a registered letter would be the equal of the best-intentioned and most deserving prospective settler in the United States. It seems to me the abuse would simply be aggravated by the proposed amendment.

Now, just one worth further. I think there is some misapprehension about the great advantage secured by making one of these drawings. When the prospective settler goes out to Rosebud or to Standing Rock and files or registers a request there and gets a certain number, if he succeeds in drawing a number which will permit him to file, he has not secured a quarter of a section of land by any means. In fact, his troubles have just commenced. He has a number that permits him to file. But he must go and inspect the land. He must then go and enter the land. He must make settlement upon it. He must put improvements upon it. He must reside upon it; and under present conditions, which in the protection of the public domain are exacting, as they ought to be, by the time he gets through with his settlement and with his improvements, and pays what is required, he has paid practically all that the land is worth, unless he is fortunate in securing an unusually

good tract. The best lands are gone. What are left are the culls; and I think the proposed remedy of the Senator from Oklahoma would really aggravate the difficulty and be an abuse.

Mr. GORE. Mr. President, I think both of the Senators from South Dakota misapprehend my purpose. It is not my purpose to restore the old plan of opening these lands by run or rush. I think the plan of opening by registration and lottery has a great many advantages over the old system. But my purpose is to improve and perfect the system of opening by registration and lottery.

I can see no good reason why a citizen of New England, a citizen of Maryland, or a citizen of Oklahoma should be compelled to journey from his home to South Dakota, delightful as such a journey would be, merely to register and obtain a right to enter this lottery. The plan I suggest will obviate that necessity and will avoid those evils.

I went through a registration of this sort. I slept on the ground for three nights, and I know the inconveniences and the annoyances which characterize those occasions. An applicant may have to camp for two or three weeks before he can make out his registration papers. The actual business of making out the papers requires only ten or fifteen minutes, and it merely consists of answering a series of questions and swearing before a notary public that the answers are true. Those questions can be answered and that oath can be made as well in New England, Maryland, or Oklahoma as in the State of South Dakota. There are certain qualifications prescribed that would be just as applicable to the man in Virginia as to the man actually upon the ground, which dispenses with that objection urged by the Senator from South Dakota.

The opening on which I made an assault with an intent to obtain a homestead was attended by some 170,000 applicants. They came from every State in the Union. With 13,000 claims to be awarded, there were fourteen or fifteen persons who incurred that expense and that annoyance for every one person who had the good fortune to draw a claim.

It is true the homesteader does as much for the Government as the Government can do for him. But the inconveniences following entry attend one system as well as the other. I wish to make it possible for every man in the United States who desires a home to make his application without expense and without inconvenience. Many people will incur an expense of two or three hundred dollars, when the only necessary expense should be a notary fee, paid to an officer at the home of the applicant. All the advantages of the registration system can be maintained and all the disadvantages can be avoided.

Now, I marvel somewhat at, and I heard with regret, the suggestions from the Senators from South Dakota, that if this plan were adopted the applications would be infinite in number. It is suggested as an objection to the plan that there would be a limitless number of applicants. Mr. President, that is the strongest argument in favor of the plan I propose. Why disqualify any American citizen from the opportunity of obtaining a home in the glorious State of South Dakota? There are many citizens, deserving citizens, who desire a home and who are unable to make this expensive journey, and I would not close the door to the humblest citizen in this Republic.

The other evil, of persons applying for an even entering these lands who are not bona fide settlers and who have no purpose of establishing a permanent home,

can be obviated by striking from the bill the commutation clause, which dispenses with the requirement of five years' residence, permitting an adventurer to enter these lands, reside upon them for eight months, and then sell them to any purchaser who may come hither.

Now, sir, that is a serious objection. It violates the spirit of the homestead law. It brings adventurers and speculators into competition with the honest home seeker; and that clause should be stricken from this bill, and at the proper time I shall move to do so.

Mr. GAMBLE. Mr. President, I beg pardon of the Senate for taking its time to the extent that I have done. But this bill only gives to the President and the Secretary of the Interior the power to prescribe the rules and manner of opening these reservations.

Now, leave that power with the President and with the Secretary, and perhaps the Senator from Oklahoma may make some wise and good suggestions to modify or change or alter the regulations proposed to be issued in this connection. I do not believe it would be wise to restrict it or to limit it in the way proposed.

This method has been found substantial, good, and has avoided the trouble and annoyance to which the department has been put heretofore. It has avoided violence and bloodshed and incessant troubles in matters of contests. This system has been evolved from the experience of the Interior Department in connection with the opening of a large number of reservations, and I think we had better let this procedure stand and this power remain where it is.

Mr. BURKETT. Mr. President, it seems to me the Senator from South Dakota might very well let something go into this bill which would show to the department our opposition to the present system. I am willing to leave the greatest discretion to the depart-

ment with reference to the method, but I do want in some way somehow to go on record as protesting against the miserable method that they have employed in opening up the last few reservations.

I wish to say to the Senator, with all proper apologies for differing with him, that that method was not a success. It did not prevent bloodshed. It did not prevent crime. It did not prevent the practice of all sorts of petty offenses.

Mr. GAMBLE. Now, Mr. President—

Mr. BURKETT. I want to say to the Senator, Mr. President—

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from South Dakota?

Mr. BURKETT. Yes; I will yield.

Mr. GAMBLE. Will not the Senator admit that the method pursued by the department in regard to registration and filing under this system has prevented bloodshed, has prevented difficulties, has prevented contests over the title to government lands, which were in vogue under the former system?

Mr. BURKETT. I think very possibly the Senator's observations with reference to contests is correct, and I think that is the only thing that is correct about all of it. I do not think it has done anything else than save the Government a little worry and a little expense, perhaps, in contests. It has not entirely prevented crime; it has not entirely prevented bloodshed, as I know very definitely and very certainly. No one could watch the spectacle that was witnessed in four or five towns last summer without knowing that the absolute reverse of what the Senator says is true.

Mr. GAMBLE. Does the Senator from Nebraska pretend to say that in the opening and registration of lands last fall at the Standing Rock and Cheyenne Indian reservations there was bloodshed?

Mr. BURKETT. Yes; I do mean to say it.

Mr. GAMBLE. I will be very glad to have him specify it. I am a resident of that State, and so far such information has not been communicated to me.

Mr. BURKETT. The Senator should read the history of the transaction. He should go back and read the newspapers.

Mr. GAMBLE. There was no crime in any locality.

Mr. BURKETT. They have just got through with the trial of a case of murder that resulted from it, I will say to the Senator.

Mr. CRAWFORD. Mr. President—

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from South Dakota?

Mr. BURKETT. Yes.

Mr. CRAWFORD. I never before knew the Senator from Nebraska to be so prejudiced from reading newspapers. The facts are we had an opening of this character on the Crow Creek Reservation, a few miles south of the capital of our State, two years ago, I think it was. My colleague will remember more accurately about the time. I was there at the time. There was no mob. There never was a crowd there that the hotels could not comfortably accommodate. There was no great rush, and those lands were filed upon. People came there and registered and got their numbers and afterwards filed upon those lands without, to my personal knowledge, one unseemly incident having occurred.

Now, last year, just last fall, in the Standing Rock and Cheyenne reservations, a tract of some 3,000,000 acres was opened, and the only disappointed people were the restaurant keepers and the saloon keepers and the gamblers, who had expected to have a great mob there whom they could rob and fleece. But the great

mob did not come. The trains were not overcrowded. In the aggregate, when they all got there, there were a considerable number of people, but they did not all rush in, as they did in Oklahoma, and as they did in Gregory County six or eight years ago. I am not entirely clear as to the reasons for this, but I am stating facts.

Mr. BURKETT. I should like to ask the Senator why they called out the militia?

Mr. CRAWFORD. It was not last year at all.

Mr. BURKETT. It was up in South Dakota somewhere.

Mr. GORE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Oklahoma?

Mr. BURKETT. Yes; if he wants to ask a question.

Mr. GORE. Yes; I do. Can the Senator from South Dakota state the number of persons who registered and the number of claims? That would give us some idea.

Mr. CRAWFORD. I would not want to depend upon my recollection as being exact. I think my colleague's recollection as regards that would be more dependable than mine, because he was more actively connected with the legislation. I will ask my colleague if he can answer the question as to the number of registrations and the number of claims?

Mr. GAMBLE. My recollection is it was something less than 80,000; it may have been 67,000. I have it not clearly in mind.

I may say further that one registry point was Bismarck, the capital of the State of North Dakota, where there was perfect order; Aberdeen, one of the largest cities in the northern part of the State, where there was perfect order and where there was no trouble; and in the other four places, one of which was the

capital of the State, at Pierre, and in smaller towns, there was no sign of crime. The Senator from Nebraska has simply worked upon his imagination. At one point, before the registration was had, it was thought it might be necessary to have some of the militia there. They were there for two or three days and were sent home. There was no occasion for their presence.

Mr. CRAWFORD. They were not required anyway. However, I believe the Senator from Nebraska has the floor.

Mr. BURKETT. I do not want to interrupt the Senator until he gets through.

Mr. President, I am glad to hear that things all ran so smoothly up there. But I am rather surprised to hear it. As I said a moment ago, I was on one of those trains destined to a town where registration was being made, and I know something of the conditions of travel. I know there was crime. I know there was bloodshed. I know there were men killed, because they have only recently gotten through with the trial in my own State pertaining to one offense.

Mr. GORE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Oklahoma?

Mr. BURKETT. Certainly.

Mr. GORE. I merely want to reenforce the statement of the Senator from Nebraska, and to say that if I were willing to turn State's evidence I would corroborate the statement he has made.

Mr. BURKETT. As a matter of fact—

Mr. CRAWFORD. Mr. President—

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from South Dakota?

Mr. BURKETT. Certainly.

Mr. CRAWFORD. Naturally the representatives of the State of South Dakota are a little sensitive about these charges of crime and bloodshed. I should like to have specifications here. To which opening of lands does the Senator refer in connection with his inference that there were mobs and crime and bloodshed? At the one at Gregory several years ago, nearly ten years ago, I think, there was a great pressure and I think there was considerable lawlessness, but at the last two openings, the one last year and the one two years ago, I do not know of a single case of bloodshed and violence. If the Senator does I should like to have a specification.

Mr. BURKETT. I can not tell which one of the reservations it was, because I do not know enough about them. I judge it was the Gregory opening, the one four or five years ago.

Mr. CRAWFORD. It was nearly ten years ago.

Mr. BURKETT. That is not any reflection on South Dakota. Those people did not come from South Dakota. Neither the party who was killed nor the men who did the killing came from South Dakota. So it is no reflection on South Dakota. Those things occur wherever you collect great numbers of people. The thugs and the bums there were not the great mass of the people who went there to get this land, but thugs and bums collect there for the particular occasion, and they always collect when crowds are going to gather.

If there was not anything else to brand that system as wrong, simply the reason that honest men and honest women have to go into these great crowds, and under conditions in which they have to go there, is enough to condemn it. I saw women going out there to make a homestead entry as the head of a family who were crowded into cars with more people than could find seats, riding all night, as they had been doing, and

in conditions, sanitary and social, that were absolutely unbearable and repulsive.

When they got to the place where they had to register, the complaint was not of the people who went along there as honest entrymen, going there for homesteads; but, as I said, they were at the mercy of the gamblers and the thugs and the bums, who always follow such crowds where there is not any way of controlling them.

Mr. GAMBLE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from South Dakota?

Mr. BURKETT. Certainly.

Mr. GAMBLE. I will ask the Senator from Nebraska if he is not now confining his observations to conditions in the opening that occurred in the State of Nebraska? I will say to the Senator that in the opening of the Rosebud Reservation one of the registration points was Yankton, my home town. I was there in person, and there were, I think, some 67,000 registered in practically eighteen or twenty days. Good, honest, lawabiding people came there to register, who wanted the land. They were some of the best citizens of the Northwest and from many States in the Northwest. They were not thugs or bums or gamblers. The civil authorities of the city protected them. Like conditions prevailed, Mr. President, in the recent openings in the State last fall.

I do not care to sit here and listen to a libel on the State, because I am satisfied that the Senator from Nebraska has in his mind conditions that occurred in his own State, and not the opening of Tripp County land to homesteads.

Mr. BURKETT. Mr. President, I am not going to continue this controversy. I know how sensitive are the

Senators from South Dakota in regard to anything that reflects on her police system. Nevertheless, the condition was notorious at those openings in South Dakota, and it is not to be wondered at. They are small places, probably with only one constable or justice of the peace, and that is about the extent of the police power. They can not handle those crowds and never have handled those crowds.

Mr. GAMBLE. Provision was made, as required by the Interior Department, before the towns were so designated, that police regulations should prevail.

Mr. BURKETT. Mr. President, there is not any use to be debating this question. There is not anyone who followed the newspapers or who knows anything about it who does not know that they never have been able to protect the people fully who go there, and never will. It is impossible to do it.

But that does not concern me more than the other phase of the question that I have mentioned. The Senator from South Dakota knows that I did not say that those people who went up there were all thugs and bums. If we were practicing law it would be pettifogging to put that kind of language into my mouth, because I specifically excepted ninety-nine one-hundredths of the people who go up there. They are honest people, and they go there for homesteads, but owing to the conditions they are put absolutely at the mercy of thugs and bums and gamblers, who, as I said, always follow great crowds when people are going to assemble for only a few days and then disperse, and when they know that there is no adequate policy system for the protection of the crowds that so assemble.

That is not the worst thing. As I said at the opening of my remarks, I am not so much concerned about the

man who goes there as the man who is prohibited from going under this system. The person who goes there has money to go, and he spends it, and I am not so much concerned about that. I am not so much concerned about what he has to encounter in the way of danger when he goes there. He takes the risk when he starts on such a trip as that. But I am concerned about the people who do not feel that they have the money to make that long trip when the possibilities of getting any of the lands are so remote. Let the Senator take the figures. Of course I do not have them here. I had not expected to say anything in opposition to the bill; but I will say to the Senator if he will adopt some sort of an amendment like the Senator from Oklahoma has offered, and then cut out the commutation clause in the bill, he will find that there will be more genuine homesteaders who want that land for homesteads who will go up there to make entries than there are to-day, when they realize that after living there only a few months they can commute and get a patent, when they never had, in fact, any intention of making a home there.

So if the Senator really wants the people to go up there who want to live there and have that as a home, let him adopt some kind of a clause like that, and give the people all over the country who need homes an opportunity to get into the drawing, and then cut out the commutation clause, so that only the men will go there who know they will have to live there five years before they get a patent. If you do that you will not find men going there for speculative purposes when they realize they will have to live five years on it.

Mr. CRAWFORD. Mr. President, I should like to know how the Senator would solve this difficulty. As I understand it, this land must all be paid for, and the

price named in the bill goes to the Indians. It is to keep the compact with the Indians, under which they assented that the lands should be thrown open to settlement, and pay them for the land that the settler is required to pay for the land. Unless the Government, out of its general fund, sees fit to pay the Indians the \$2.50 an acre the Government will have to get it from the settler by commutation.

Mr. DAVIS. I should like to ask the Senator from South Dakota—

The PRESIDING OFFICER. The Senator from Nebraska has the floor. Does he yield to the Senator from Arkansas?

Mr. BURKETT. I will yield for a question. I wish that these replies to my remarks might wait until I am through, but I will yield for a question.

Mr. DAVIS. I should like to ask the Senator from South Dakota if he thinks it fair to the Government to buy land to give to South Dakota? The bill provides for doing that.

Mr. CRAWFORD. I will say to the Senator—

Mr. BURKETT. Mr. President, I think, as that is opening an entirely different question—

Mr. CRAWFORD. Very well; I will not take the Senator's time.

Mr. BURKETT. I would rather finish what I have to say. As I was about to say, I think, when interrupted by the Senator from South Dakota, I am not so much concerned for the purposes of this argument about whatever crime there may have been or may not have been. And if he thinks that I reflected on South Dakota too much I want to withdraw it, because I have been through South Dakota and I know there are no more peaceable and law-abiding people in the world than the people from South Dakota. A whole lot of them went

up from Nebraska, and all who went from Nebraska are good people. If the Senator thinks that I intended to convey the idea to the world at large that they were not law-abiding, and that those people were thugs and bums who went there to get homesteads, on the contrary, I assure him he misunderstood me.

When I was interrupted I was about to say that I am more concerned about giving the men in this country who really need homes a chance to have a home. If the Senator will look up and find out who went out there to make that registration, he will discover that they were men from Nebraska and other adjoining States in the greatest number, men from Iowa and North Dakota and Minnesota and the States adjacent.

It is fair to say that those men are not as much distressed for homestead opportunities as the people in more remote States, like New England, Pennsylvania, New York, and other States east of the Mississippi River. Yet by the terms of the law compelling men to go there and register on the ground you practically made it prohibitive for the man back in New England, New York, or Pennsylvania to have an opportunity to get a home. He has to go across the continent and reach there for what? Simply to say to the Government, "I want to have a chance in your wheel of fortune to get a homestead." That is all he says when he goes out there, and he spends more than \$100 to go there and do it.

I say it is not fair to a man who lives on the Atlantic seaboard to put him to that disadvantage. If you want homesteaders, if you want to throw this land open to the men who most need homesteads, then, I say, do not put that penalty on them. Do not say to them, "You shall be at a disadvantage of \$100 or \$200 or \$250 as against the man who lives out there." Let him

go to a point in his own community and make his registration. If I was making the law, I would make it so severe that there would not be any speculator and there would not be any man allowed to impose on the Government's time or patience or expense to make a registration who did not expect in good faith to make a home. In my judgment, we ought to change this bill so as to prevent the recurrence of what has happened heretofore.

Now, to be sure, as the Senator from South Dakota says, when you let this registration be done everywhere, you multiply the number of those who are going to register. That is true. But what difference does it make? Suppose you multiply it by ten, it is all a lottery anyway. When you start the wheel going, what is the difference whether there are 10,000 envelopes in that wheel or 100,000 envelopes. If there are a hundred thousand envelopes instead of 10,000, there will be 46 States represented in the wheel instead of 5 or 6 States as under the present system. Let them register anywhere over this country, and you will have 46 States represented in the wheel, while if you make it under the bill as written, you will have 4 or 5 or 6 States represented in the wheel.

I submit to the Senator if you really want to give this land to people who need it for homes you should so frame the bill as to permit them to get it, and not make it prohibitive to the greater portion of the country.

Mr. GAMBLE. I suggest to the Senator to leave the power with the Secretary of the Interior, in a proclamation to be issued by the President, and possibly a better plan may be devised. But after the experience of a number of years, I do not want to accept hastily an amendment which has not been considered. Experience

in this matter has gone on for years, and this is the best method so far that has been found.

Mr. CRAWFORD. Mr. President, with reference to sections 16 and 36, they or their equivalent belong to South Dakota, because the Government of the United States granted sections 16 and 36 to the State in the enabling act under which the State was admitted into the Union, as it has granted to States over and over again millions of acres of public domain for the establishment and maintenance of common schools.

Mr. DAVIS. Mr. President—

Mr. CRAWFORD. That is all I desire to say with reference to that proposition. There are one or two other matters—

The PRESIDING OFFICER. Does the Senator from South Dakota yield to the Senator from Arkansas?

Mr. DAVIS. Just for a question.

Mr. CRAWFORD. Very well.

Mr. DAVIS. The Senator from South Dakota certainly does not remember that his colleagues in this discussion admits that sections 16 and 36 belong to the Indians, not to the State of South Dakota.

Mr. CRAWFORD. The grant was made, and it was up to the Government to secure the title from the Indians to make good its grant. That is all there is to that.

Now, with reference to the five-years' settlement without pay you have to take one of the two horns of the dilemma right there. If the settler goes and lives on his quarter section for five years and then gets his patent without paying the Government anything, the Government must pay the Indians the \$2.50 an acre for the land, and if the Government does not get the money from the settler it must take it out of the general fund. But the Government will take it from the

settler because the settler is getting the land and the charge of \$2.50 is taken from him, while over and over again in years gone by the Government has taken \$1.25 an acre from the settler. So the commutation is the only practical way by which you can get the money from the land.

[45 Cong. Rec. 1073-1075 (1910)]

LANDS IN ROSEBUD INDIAN RESERVATION.

Mr. GAMBLE. I move that the Senate proceed to the consideration of the bill (S. 183) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. DAVIS. Mr. President, I make the point of order that that can only be done by unanimous consent.

Mr. GAMBLE. I make the motion to proceed to the consideration of the bill, and I do not think that requires unanimous consent.

The VICE-PRESIDENT. The order for the day has been laid aside by unanimous consent, and the Chair thinks that the motion of the Senator from South Dakota is in order. The question is on agreeing to the motion made by the Senator from South Dakota.

The motion was agreed to, and the Senate, as in Committee of the Whole, resumed the consideration of the bill.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Oklahoma [Mr. Gore], which has heretofore been read.

The amendment was rejected.

Mr. DAVIS. Mr. President, the Senator from Oklahoma [Mr. Gore] requested me to say to the Senator from South Dakota [Mr. Gamble] that he had gone to the library to look up some authorities in reference to this bill, and that he trusted the Senator from South Dakota would not press the matter until his return. That is the reason why I called the attention of the Chair to the fact that I thought unanimous consent was necessary for the consideration of the bill. I trust the Senator from South Dakota will not press this matter until the Senator from Oklahoma shall return to the Chamber.

Mr. GAMBLE. Mr. President, I desire to be most courteous, and in no sense do I want to be discourteous to either the Senator from Arkansas [Mr. Davis] or the Senator from Oklahoma [Mr. Gore]. This bill, however, has been pending before the Senate for practically two hours this morning. I do not know that the Senate can suspend its business, and I do not know that I should be called upon to lay aside the bill while an examination was being conducted in regard to it.

Mr. DAVIS. I suggest the absence of a quorum, Mr. President.

The VICE-PRESIDENT. The Senator from Arkansas suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bacon	Crane	Guggenheim	Piles
Bankhead	Crawford	Heyburn	Rayner
Beveridge	Cullom	Johnston	Root
Borah	Cummins	Jones	Scott
Bourne	Davis	Kean	Simmons
Brandeggee	Depew	La Follette	Smith, Md.
Bristow	Dixon	Lodge	Smith, S. C.
Brown	du Pont	Martin	Smoot
Bulkeley	Flint	Money	Stephenson
Burkett	Frazier	Nixon	Sutherland
Burnham	Frye	Oliver	Taliaferro
Burrows	Gallinger	Overman	Warren
Burton	Gamble	Owen	Wetmore
Chamberlain	Gordon	Page	
Clapp	Gore	Paynter	

Mr. BACON. I simply desire to announce that my colleague [Mr. Clay] is necessarily detained from the Chamber by illness.

Mr. FLINT. I desire to announce that my colleague [Mr. Perkins] is unable to be present at the session of the Senate to-day on account of illness.

The VICE-PRESIDENT. Fifty-eight Senators have answered to the roll call. A quorum of the Senate is present.

Mr. GORE. Mr. President, I desire to inquire the status of the bill providing for the opening of the Rosebud Indian Reservation?

The VICE-PRESIDENT. The bill is still before the Senate, as in Committee of the Whole, and open to amendment.

Mr. GORE. Was it placed before the Senate, as in Committee of the Whole, by unanimous consent?

The VICE-PRESIDENT. It was done on motion adopted by the Senate.

Mr. GORE. Mr. President, I have been informed during the progress of the debate that occurred a moment ago that President Hill, of the Great Northern Railroad, stated in a speech, and I believe in an interview, that certain of these openings brought more than a million of dollars into the treasury of his road; that it was a fraud and a robbery on the people; and that if he could ascertain the names and addresses of those people he would return the money. I have been informed that it might be possible to obtain and authenticate that interview, and I should like to have time to do it, because it certainly ought to be conclusive if it can be done. I move, therefore, that the further consideration of the bill be postponed.

Mr. GAMBLE. Mr. President, this bill has been on the calendar for some time. This is the fourth time it has been reached for consideration. This subject has been fully discussed, and the amendment proposed by the Senator from Oklahoma [Mr. Gore] has been considered and has been voted upon. I do not care to take the time of the Senate in discussing this motion or the method of land opening; but under the experience of the Interior Department the procedure which is now and has been in vogue for a number of years past has been the outgrowth of the experience, wisdom, and judgment of the Interior Department. I say, so far as I am concerned, that from the experience we have had with it in the State of South Dakota it has worked well.

To throw open to every man and woman in the United States the opportunity of filing, I submit, would tie up the opening of this reservation indefinitely by having a million people make filings who never would contemplate going upon the land, because these lands will be opened, as proposed under this measure, on an

appraisement on their value. Any settler intending to settle and take the land must not only be a homesteader and reside upon the land, but must pay to the Government for the Indians the appraised valuation of the land. It is no easy matter to go out there and carry out this undertaking. I submit that we should proceed with the consideration of the bill.

Mr. GORE. Mr. President, I desire to inquire whether a vote was taken on the amendment which I offered?

Mr. GAMBLE. Yes, sir.

Mr. GORE. I was absent from the chamber only about four or five minutes, and I express my regret that it occurred during my absence. It seems to me, if the suggestion I have just made with reference to a million dollars being collected unfairly and unwarrantedly from the people can be substantiated, it certainly ought to be done. The land in South Dakota will probably keep, and I see no reason why every Senator should be expected to sacrifice the interests of every one of his constituents in order to boom and boost two or three towns in the State of South Dakota, for that is what this amounts to.

Mr. GAMBLE. Mr. President, I have apologized many times for taking the time of the Senate, but twenty years ago practically the entire western half of the State was an Indian reservation. It has been opened gradually and by degrees. The Indian reservations have stood as a menace to the development and the growth of the Commonwealth. The Indians themselves agreed to the provisions of this bill after it had been submitted to them for their consideration. The department agreed to it. It follows in line, Mr. President, with all of the measures providing for opening reservations in the Western States.

It is suggested that the consideration of this bill be suspended until some rumor or newspaper reports to the effect that somebody has made an observation as to the receipts from the transportation of passengers to land openings could be run down or some interview inquired into. I submit, Mr. President, that is not a sufficient reason to delay the passage of this bill. In fairness and in justice to the importance of the measure and to the interests of the Indians and the interests of the people of South Dakota this bill ought to pass.

The VICE-PRESIDENT. The question is on agreeing to the motion of the Senator from Oklahoma to postpone the consideration of the bill indefinitely.

Mr. GORE. Mr. President, I did not mean indefinitely, but to postpone the present consideration of the bill. If it is necessary to fix a date, I will suggest a date. I supposed that motion was in order.

Mr. BEVERIDGE. That can not be done.

Mr. GORE. I am as anxious as the Senator from South Dakota that this land should be opened and then converted into homes, and I have no disposition to delay or defeat the measure. I move that it be postponed for a week. I think in that time possibly I can ascertain from the library regarding the matter, and obtain the information I desire.

The VICE-PRESIDENT. Does the Senator modify his motion?

Mr. GORE. Yes, sir.

Mr. BEVERIDGE. Mr. President, the Senator was not here when the unfinished business was laid aside by unanimous consent, but retaining its place as unfinished business, it being laid aside temporarily for to-day only. It would be impossible, therefore, for the Senator now to make a motion for the postponement of the consideration of this bill for a week, because the

unfinished business, by unanimous consent, retains its place. The Senator can not move, therefore, the postponement of the consideration of the bill to a day certain. The time for the consideration of the bill has already been fixed by unanimous consent when the Senator was out of the Chamber.

Mr. GORE. Then, is it the unfinished business?

Mr. BEVERIDGE. No. The unfinished business, by unanimous consent, was laid aside temporarily for the day only, the unanimous-consent agreement including that statement, and also that it was to resume its place to-morrow and hereafter every day at 2 o'clock. Therefore the Senator must see that he can not move to postpone the consideration of the pending bill to a fixed date.

Mr. GORE. I suppose a motion would be unavailing, anyway, but I move that the further consideration of the bill be postponed for to-day.

Mr. CRAWFORD. Mr. President, as I understand, no amendment is pending to the bill. The only amendment proposed was that by the Senator from Oklahoma [Mr. Gore], and that has been rejected. The only basis for the request for delay is that somewhere in some newspaper it was stated that some railroad president told how much money his company got from the passengers who flocked to one of these openings somewhere, and that "somewhere" is not yet stated. It seems to me that that is hardly a sufficient reason why a deliberative body should, when a bill has been reached for consideration after quite full discussion, delay action upon it.

Mr. BEVERIDGE. I will make a suggestion, which I think the Senator from Oklahoma can follow.

Mr. GORE. I inquire whether it is not possible by objection to the further consideration of this measure to have it passed from Rule VIII to Rule IX?

The VICE-PRESIDENT. No; the Senate has determined by motion to consider the bill now.

Mr. GORE. I was not aware of that.

Mr. BEVERIDGE. If the Senator from Oklahoma will permit me, it was stated that his amendment had been disagreed to on a vote while he was out of the Chamber. I suggest to the Senator that he can submit his amendment again in the Senate. So he has lost no right.

The VICE-PRESIDENT. The question is on agreeing to the motion of the Senator from Oklahoma to postpone indefinitely the consideration of the pending bill.

—The motion was not agreed to.

The VICE-PRESIDENT. The bill is still before the Senate, as in Committee of the Whole, and open to amendment.

Mr. DAVIS. I suggest the absence of a quorum, Mr. President.

The VICE-PRESIDENT. The Senator from Arkansas suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bacon	Clark, Wyo.	Gordon	Piles
Beveridge	Crawford	Gore	Rayner
Borah	Cullom	Guggenheim	Root
Bourne	Cummins	Hughes	Scott
Brandegee	Davis	Jones	Shively
Bristow	Depew	Kean	Simmons
Brown	Dolliver	Lodge	Smith, Md.
Bulkeley	Elkins	McEnery	Smoot
Burkett	Fletcher	Martin	Stephenson
Burnham	Flint	Money	Stone
Burrows	Frazier	Nixon	Warren
Burton	Frye	Oliver	Wetmore
Chamberlain	Gallinger	Owen	
Clapp	Gamble	Page	

Mr. CLAPP. I desire to say—and I wish my statement to cover the several calls which I anticipate may be made this afternoon—that my colleague [Mr. Nelson] is to-day absent on committee work by authority of the Senate.

Mr. DAVIS. The statement of the Senator from Minnesota is entirely gratuitous. A Senator has a right to demand a call of the roll at any time, and I expect to exercise that right as long as I think it is the proper thing to do.

The VICE-PRESIDENT. Fifty-four Senators have answered to their names. A quorum of the Senate is present. If there be no further amendments, the bill will be reported to the Senate as amended.

Mr. GORE. I submit one other amendment. I do not care to make any remarks upon it. It relates to striking out the commutation clause, beginning, I believe, in line 23, page 6, and closing with the word "made," in line 3, on page 7. It simply closes the door to adventurers

and speculators who might file under the provisions of the proposed act and limits the filing to actual and bona fide homesteaders as far as possible.

The VICE-PRESIDENT. The Senator from Oklahoma offers an amendment, which will be stated.

The Secretary. Beginning on page 6, line 23, it is proposed to strike out the following:

And provided, That nothing in this act shall prevent homestead settlers from commuting their entries under section 2301, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for the payments previously made.

Mr. GAMBLE. Mr. President, I simply wish to say that this is the uniform provision in all these bills. So far as concerns the question of good faith, the settler must pay one-fifth of the appraised value of the land upon entry, and before any commutation can be made there has to be a residence of fourteen months, and one-fifth more paid. So all questions as to the good faith of a homesteader are abundantly provided for.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Oklahoma.

The amendment was rejected.

The bill was reported to the Senate as amended, and the amendments were concurred in.

Mr. GORE. I desire to submit in the Senate the amendment which I offered in Committee of the Whole.

The VICE-PRESIDENT. The Secretary will state the amendment.

The Secretary. It is proposed to add, at the end of section 2, the following proviso:

Provided, That applicants to enter said lands shall be allowed to forward their applications by registered mail to the authorities of the local land office, under such rules and regulations as the Secretary of the Interior may prescribe.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Oklahoma.

Mr. GORE. I should like to have a yea-and-nay vote on the amendment. I do not care to discuss it further.

The yeas and nays were not ordered.

The amendment was rejected.

The VICE-PRESIDENT. The question is, Shall the bill be engrossed for a third reading and read the third time?

Mr. DAVIS. I suggest the absence of a quorum.

Mr. GAMBLE. Mr. President, I rise to a point of order.

The VICE-PRESIDENT. The Senator from South Dakota will state it.

Mr. GAMBLE. I do not think any business has been transacted since the last roll call.

Mr. LODGE. We have taken two or three votes.

Mr. GAMBLE. The same question has just been raised, and it is only dilatory.

The VICE-PRESIDENT. The Chair thinks business has intervened. The bill has progressed from the Committee of the Whole to the Senate, and the Senate has acted upon an amendment.

Mr. DAVIS. Two amendments, Mr. President.

The VICE-PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bacon	Clapp	Frye	Nixon
Bankhead	Clark, Wyo.	Gallinger	Oliver
Beveridge	Crawford	Gamble	Overman
Borah	Cullom	Gore	Owen
Bourne	Cummins	Hughes	Page
Bristow	Davis	Johnston	Piles
Brown	Depew	Jones	Shively
Bulkeley	Dixon	Kean	Simmons
Burkett	Dolliver	La Follette	Smoot
Burnham	du Pont	Lodge	Stephenson
Burrows	Elkins	McCumber	Stone
Burton	Fletcher	McEnery	Taliaferro
Chamberlain	Flint	Money	

Mr. BACON. I do not think it is necessary to repeat the announcement already made as to the cause of the absence of my colleague [Mr. Clay].

Mr. KEAN. I desire to announce that my colleague [Mr. Briggs] is necessarily absent.

Mr. DU PONT. My colleague [Mr. Richardson] is necessarily absent from the city.

Mr. ELKINS. I wish to announce that my colleague [Mr. Scott] is necessarily detained from the Senate.

The VICE-PRESIDENT. Fifty-one Senators have responded to their names. A quorum of the Senate is present. The question is, Shall the bill be engrossed for a third reading and read the third time?

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

[45 Cong. Rec. 1215]

SENATE BILLS AND RESOLUTION REFERRED.

Under clause 2 of Rule XXIV, Senate bills and resolution of the following titles were taken from the Speaker's table and referred to their appropriate committees, as indicated below:

S. 183. An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[45 Cong. Rec. 1752 (1910)]

REPORTS OF COMMITTEES ON PUBLIC BILLS AND
RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several calendars therein named, as follows:

Mr. BURKE of South Dakota, from the Committee on Indian Affairs, to which was referred the bill of the Senate (S. 183) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect, reported the same with amendment, accompanied by a report (No. 429), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

[45 Cong. Rec. 5456-5473]

LANDS IN ROSEBUD INDIAN RESERVATION.

Mr. BURKE of South Dakota. Mr. Speaker, I now call up the bill S. 183, and ask that the title of the bill may be read, because I presume we will go into the Committee of the Whole House on the state of the Union.

The SPEAKER. The Clerk will read the title of the bill.

The Clerk read as follows:

An act (S. 183) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

The SPEAKER. Under the rule, the House is in Committee of the Whole House on the state of the Union for the consideration of the bill the title of which has just been read. The gentleman from New Hampshire [Mr. Currier] will take the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the consideration of the bill (S. 183), which the Clerk will report.

Mr. BURKE of South Dakota. Mr. Chairman, I ask that the first reading of the bill be dispensed with, and, when the bill is taken up under the five-minute rule, that the substitute be read in lieu of the original.

The CHAIRMAN. The gentleman from South Dakota asks unanimous consent that the first reading of the bill be dispensed with, and that, when the bill is read under the five-minute rule for amendment, the substitute be read in lieu of the original bill.

Mr. MANN. As an original bill itself, so far as amendments are concerned.

The CHAIRMAN. As an original bill, so far as amendments are concerned. Is there objection?

There was no objection.

Mr. BURKE of South Dakota. Mr. Chairman, this bill is in line—in fact, almost a duplication—of bills that have heretofore passed and become law, proposing to dispose of surplus and unallotted lands of the different

Indian reservations of the country. This particular bill refers to that portion of the Rosebud Reservation in South Dakota known as Mellette County. There is contained in the tract affected by the legislation about 800,000 acres of land. The Rosebud Reservation is one of the separate reservations created out of the original Sioux Reservation by the department and, later, the act of Congress of 1889. There are about 5,000 members of the Rosebud tribe. In the early nineties a treaty was made with these Indians by which they agreed to cede to the United States so much of their surplus and unallotted lands as were located in Gregory County. The price to be paid for the lands was \$2.50 an acre. Owing to objections here and elsewhere it was impossible to secure a ratification of that treaty.

In the Fifty-seventh Congress, if I am correct about it, we enacted a law amending that treaty and changing it in this respect. Instead of paying to the Indians \$2.50 an acre, the price agreed upon, we provided that the lands disposed of in the first three months after the opening should be sold at \$4 an acre; the next three months, \$3 an acre; and lands disposed of after six months, \$2.50 an acre; then, after four years after the opening, the undisposed of lands were to be sold without any conditions as to residence or compliance with the homestead law, and sold outright. The passage of the Rosebud bill was the beginning of the legislation that has since been enacted, relative to the sale and disposition of surplus and unallotted lands in Indian reservations.

Now I yield to the gentleman from New York.

Mr. GOLDFOGLE. Why was that sliding scale downward fixed?

Mr. BURKE of South Dakota. On the theory that the first lands to be entered upon were more valuable.

Mr. GOLDFOGLE. These lands were to be purchased from the Indians, were they?

Mr. BURKE of South Dakota. These lands were being sold by the Government for the benefit of the Indians.

Mr. GOLDFOGLE. Was there not more chance of people waiting until the period expired for the higher price, and then purchasing the property at a lower price?

Mr. BURKE of South Dakota. There were 2,500 160-acre lots to be disposed of, about one-fourth of which was rough land along the Missouri River, and unfit for homestead settlement. Notwithstanding there were only about 1,500 or 1,600 tracts that were suitable for homestead purposes, 105,000 people participated in the registration when these lands were disposed of. So I may say to the gentleman that there was no waiting in connection with the matter. On the contrary, the lands were taken at the higher price and in fact were not worth at the time the price that was required to be paid by the entrymen.

Mr. GOLDFOGLE. I did not hear the full reading of the bill. What is the purpose you desire to reach by this pending measure?

Mr. BURKE of South Dakota. The pending measure is a proposition to sell other lands of this same tribe of Indians in another portion of the reservation, known as Mellette County. I am going to lead up to that after I have briefly given a description of the sales of this reservation that have been made heretofore. And I may say to the gentleman, while it is anticipating what I was going to say, that the price of the land to be sold under the pending bill is determined by appraisement and not fixed in the bill, as was the case in the original bill which I have referred to.

Mr. GOLDFOGLE. Who is to appraise the lands?

Mr. BURKE of South Dakota. Well, now, the gentleman is anticipating my argument. I wish he would allow me to proceed; but I will answer his question. It is to be appraised by three persons—one a member of the tribe of Indians, another an inspector or special agent or some person in the employ of the Government in the Interior Department, and the third by some citizen of the State in which the land is located, creating a commission of three.

Now, if the gentleman will allow me to proceed, when I get down to the pending bill I shall be glad to answer any questions that he may ask.

Mr. Chairman, in the original Rosebud bill the Government had contracted to buy of the Indians 1,040,000 acres of those surplus lands, and if they were disposed of under the terms of the bill as it finally became law, the Indians would not receive that amount of money, and no person anywhere made any objection to the passage of the bill upon any other ground than that it would not bring as much money as we had promised to pay if the treaty had been ratified.

It was the opinion of those of us who had to do with the legislation that it would bring considerably more than \$1,040,000; and I want to say for the information of the House that there has been received and gone into the Treasury from that opening up to the present time over a million and a half of dollars, and that the Indians will benefit by reason of amending the treaty to the extent of half a million dollars.

In the Fifty-ninth Congress a bill was passed affecting other lands of this same tribe of Indians, namely, the surplus and unallotted lands in Tripp County. That bill was almost identical with the pending measure, except that it fixed the price of the lands very similarly to the

former bill and provided that for the lands taken in the first three months the price should be \$6 an acre; in the next three months, \$4 an acre; and thereafter \$2.50 an acre. The filings upon that land only began in April a year ago, as I recall, and all the lands that are at all desirable or upon which a settler is sure of making a living have been taken, and one-half of the lands were taken at the higher price, namely, \$6 an acre. To be accurate, I think 1,911 entries were made out of 4,000, so about one-half went at the higher price.

The pending bill is along the same line as the others that have been passed and to which I have referred, except that it follows a plan that was adopted in a bill that was passed in the Sixtieth Congress, proposing to dispose of a portion of the surplus and unallotted lands of the Cheyenne and Standing Rock Indians in South Dakota; and instead of fixing the price, it provides for the appointment of appraisers, as I have already stated to the gentleman from New York in reply to his inquiry.

The lands in the Cheyenne and Standing Rock reservations, which were appraised under a provision similar to the one in this bill, were classified, and those of the highest class were appraised at \$6 an acre, and they ran down as low as 50 cents, but very little at a price as low as that. I think the minimum price, with possibly a few exceptions, is about \$1.50 an acre.

The bill meets with the approval of the Indians. They have given their assent, having been negotiated with by a special agent of the Department of the Interior. The original treaty made in 1889 with these Indians provided expressly that after the lands had been allotted to the Indians the surplus lands should then be disposed of under the provisions of the homestead law.

It also provided that the proceeds from the sale of the surplus unallotted lands should be placed in the Treasury to the credit of the Indians; not paid to the Indians, but that it should be subject to appropriations by Congress for the support, civilization, and education of the members of the tribe.

I may say that since the treaty of 1877 Congress has appropriated annually an amount that would probably average in all, for the support of the Sioux Indians, a million dollars, and we are obligated under the terms of the treaty of 1877 to provide for all time, or until such time as they may become self-supporting, for their care, support, and education. And for the first time in this present Congress there has been an appropriation for the support of the Cheyenne and Standing Rock Indians out of money in the Treasury to their credit, received from the sale of surplus lands, thereby relieving the Government from the obligation to that extent that it has heretofore been under in supporting these Indians. And I will state that, so far as these particular Indians are concerned who are affected by this bill, there will probably never be any other appropriation made out of the funds in the Treasury except such funds as are there to the credit of the Indians.

Mr. MONDELL. Would it be agreeable to the gentleman at this time to yield to me for an inquiry?

Mr. BURKE of South Dakota. I yield to the gentleman for a question.

Mr. MONDELL. I notice on page 16 of the bill provision is made that all lands remaining undisposed of at the expiration of four years from the opening may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this act. I do not understand that that reappraisal would in any way

affect the disposition of the lands so reappraised, which would still remain subject to homestead entry.

Mr. BURKE of South Dakota. They would still be subject to homestead entry for a period of three years, and then after seven years the lands remaining undisposed of would be disposed of regardless of requiring homestead residence and settlement.

I might say, Mr. Speaker, that there are two propositions to be considered in disposing of the unallotted and unused lands on Indian reservations. One is, at the earliest possible date, to get among the Indians the white men, and have those lands that are of no benefit to anyone, that are lying idle, doing no good, opened up and developed into farms, and I believe that the placing through what were heretofore reservations actual settlers will have the effect of civilizing the Indians who will have allotments and also give value to these allotments which at present are of very little value.

It might be interesting at this point to show to the House a map, so that the committee may have some idea of what lands are disposed of and what lands are allotted to Indians. These squares upon the map represent a township 6 miles square. The land in black has all been allotted to the Indians. The lands that are to be disposed of under the homestead law at \$6 an acre are the lands that appear in red. It will be noticed that wherever there is a stream every foot of the land has been taken, and the upper lands are all that are left for the poor fellow that has to go in there and comply with the requirements of the homestead law, in addition to paying \$6 an acre for the land and for twenty-five years paying all of the taxes that may be raised for the support of the schools and the roads and the bridges and the courts. It will be readily seen that it

is not much of an inducement for a person to go into a country like that and try to acquire title to land under these conditions, and it will be readily appreciated that if these lands that are in red and white are improved and settled upon by white men, it adds great value to the Indian allotments adjoining.

In addition to that, just as soon as these reservations are opened up and settled railroads usually come in and thereby give greater value to the lands owned by the Indians. The lands in black are the allotments and those in red are the lands homesteaded up to the time this map was made.

I have here a map showing the allotted lands in a bill that will follow this one in the Pine Ridge Reservation, and the bill is identical with the one under consideration in every respect, only it describes land in the reservation adjoining on the west, and I may say that the yellow on the map I hold in my hand shows the lands the Indians have taken for allotment, and you will notice some townships they have taken practically solid. In other words, if a man goes into that township and settles on that land, he and five others will have to be assessed for all moneys that may be raised by assessments for the next twenty-five years. So that it will be seen that when the price is fixed, as it usually is, at \$6 an acre for the choice lands, under all of the circumstances it is a reasonably high price, when you consider that the purchaser must comply with the requirements of the homestead law as to residence and improvements.

Mr. MANN. Will the gentleman yield for a question?

Mr. BURKE of South Dakota. Yes.

Mr. MANN. The gentleman says that \$6 an acre is a high price for the land under all of the circumstances,

and I quite agree with him. I would like to ask him what would that land be worth in a country if there were no Indians there at all and it was all subject to cultivation and taxation, providing for schools and the other accessories of white people?

Mr. BURKE of South Dakota. It is almost impossible to say what such lands are worth. The Sioux Reservation, when it was divided up by the act of 1899, opened to settlement 9,000,000 acres in round numbers between the White and the Cheyenne rivers and the country lying immediately west of the Missouri River, right across the river from where I reside.

The land was open to homestead settlement, the terms being that, in addition to complying with the law as to residence and improvements, they were required to pay \$1.25 an acre for all lands taken within two years. Then the price was reduced to 75 cents an acre, and then later on it was reduced to 50 cents an acre. Up to 1900, or about 1900, there had been less than 500,000 acres of that taken up, and much of that which had been taken was abandoned, and, as I recollect, title to something like 100,000 acres of land had been acquired.

Now, the gentleman will recall that in the Fifty-sixth Congress there was some legislation known as the free-homes legislation, and the terms of payment, so far as that land was concerned, were changed, and if a person resided upon the land for five years, he did not have to pay anything for it. If they commuted, they had to pay the Indian price of 50 cents an acre.

Now, after the passage of the free-homes legislation there began to be some demand for this land, and it ran along until in 1904 or 1905, and all of a sudden there commenced to be a rush and people went in there in large numbers, so that that country has been very

largely filed upon. The lands are selling there now where there is title for \$10 and \$15 an acre, and in some instances less than \$10 an acre. Now, up to this change in conditions lands east of the river that to-day are selling for \$20 and \$30 an acre were going begging at prices ranging from \$1 to \$5 an acre. I may say that in 1898 and 1899 I had to do with the sale of lands in separate tracts amounting to over 12,000 acres, with taxes paid, patents of record, abstract of titles, in each case, at \$1 an acre, and the syndicate that bought the land bought about 40,000 acres at about that price. They paid a little more for tracts that they were desirous of getting to adjoin others that they had purchased. Now, here has been this condition of emigration flowing into the country, a great demand for land, and, fortunately, conditions that have been favorable for farming, and high price of farm products, and so forth, until at present there is such a demand for the land that I do not know whether the price helped the value or not. I am sometimes inclined to think that perhaps it is inflated somewhat.

But to come back now to the question asked by the gentleman from Illinois, if this land was to be disposed of outright and there was to be no requirement of settlement and there was no limitation as to the amount that a person might acquire, as to what it might bring, I do not know; I would say \$10 an acre, perhaps. I do not know.

Mr. MANN. What is this land used for in the main, where it is taken?

Mr. BURKE of South Dakota. For farming.

Mr. MANN. I understand that; but what character of farming?

Mr. BURKE of South Dakota. The raising of all kinds of small grain, and where this land is located they

grow corn successfully. This county is just above the Nebraska line. There is one county between this county and the Nebraska line. It is in the western part of the State, and in the section that has always been regarded as semiarid, and if the gentleman has ever been out in Nebraska, on the northwestern line, northwest from Omaha, I think he will recall about where Valentine, Nebr., is, and that is about due south from the land affected by this bill.

Mr. MANN. Is this land mostly for actual cultivation or for grazing?

Mr. BURKE of South Dakota. Well, it has always been used for grazing purposes, and my own opinion is that it is very much more suitable for stock raising than for raising grain.

Mr. MANN. At some point in the gentleman's argument I wish to ask him another question.

Mr. BURKE of South Dakota. I will be very glad to have the gentleman ask any question.

Mr. MANN. The bill provides that any lands remaining unsold after they have been opened to entry for seven years shall be sold to the highest bidder for cash without regard to the prescribed price fixed under the provisions of this act. Would not that, or would it, authorize the sale of large tracts of land if there remained such tracts of land to syndicates or other large purchasers?

Mr. BURKE of South Dakota. I will say that if I had been drawing this bill twenty years ago I might not have put in this provision. But experience has demonstrated that there is such a demand for land that every foot of it that it is possible for a person to even imagine that he can make a living upon is acquired under the homestead law.

Mr. MANN. Then, I can not imagine the necessity of having that provision in.

Mr. BURKE of South Dakota. Wait a minute. I was going to say that the purpose of the provision is to make it possible to close up the transaction so as to know just how much money is going to these Indians and get it into the Treasury without future legislation. Now, let me tell you what happened with a similar provision in the Gregory County bill, that I referred to in the opening part of my remarks.

It was thought that there would be probably 100,000 acres of land that never would be homesteaded. That was along the Missouri River, much of it perpendicular and much of it gumbo, without anything growing upon it. The homesteaders went in and they kept taking the lands that were undisposed of and going up in the ravines; wherever there was a little strip of fertile land it was taken up by the homesteader. Last year, when they came to dispose of the remaining portion of the lands, there was less than 50,000 acres, and they sold, as I recall now, at \$4.70 an acre—something like that, nearly \$5 an acre—sold at public auction in tracts of 80 and 40 acres. In that legislation there was a limitation, as I recall, that no one person should purchase more than 640 acres. I believe that was put in by the gentleman from Texas. I have no objection to such a limitation, but it does not mean anything.

Mr. MANN. But it does mean a great deal, I will say to the gentleman.

Mr. BURKE of South Dakota. It does not mean anything, because if the gentleman was to go and purchase the land without a limitation, he would have as many people present as he wanted to buy tracts equal to the limitation, and there is nothing to prevent it. Another thing, I may say to the gentleman, it is not

likely that there will be in this reservation anything more than small tracts of 40 and 80 acres. This is different than the Gregory County tract, because that was upon the Missouri River and had bluffs. This is all prairie land, excepting as it may be broken up by little streams running through it, some of which do not have any water in them during several months in the year.

Mr. MANN. The gentleman says it is no good to put a limitation in the bill, because the purchasers may sell their property to a single individual. That is true under the homestead law, and yet no one will suggest that that is any reason for not providing for homesteads. The homesteader does not have to live on his land very long until he can commute.

Mr. BURKE of South Dakota. Fourteen months under the present law.

Mr. MANN. He may sell his land, and 50 of them may sell their lands to a single individual; yet, as a rule, that would not often be the case, if it ever is.

Mr. BURKE of South Dakota. When we reach the consideration of the bill under the five-minute rule, if the gentleman desires to offer an amendment to limit it to 100 acres or 150 acres or 200 acres, I have no objection, because I really do not think it amounts to anything. I do not object to it for that reason. I was taking into consideration the interest of the Indian who will be benefited by the sale of this land.

Mr. MANN. They will get a great deal more than they are entitled to anyhow.

Mr. BURKE of South Dakota. That may be. But remember that in this instance it goes into the Treasury and is not paid to them, not a cent of it, and never will be if I can prevent it from being done.

Mr. MANN. But we have to pay the interest on it.

Mr. BURKE of South Dakota. But I was going to say that some people have more confidence about the purchase of leftover lands than other people have. A syndicate might form and go out there and buy a large amount of these surplus lands that would be undisposed of, and use it for trading purposes, and sell wherever they could, because they would have to sell it probably somewhere else than upon the land, and it would bring a greater price than if it were limited as to the area that any one person might purchase.

Mr. MANN. Well, it may be true that it would bring a bigger price to sell the entire area to any one person.

Mr. BURKE of South Dakota. No one would wish to do that.

Mr. MANN. But we are paying the Indians not for value which they have put on the land, but we are paying the Indians for a value which we have made upon the lands.

Mr. BURKE of South Dakota. I am very glad that there is one gentleman that lives east of the Mississippi River that appreciates that fact.

Mr. MANN. I think a majority of the Members of this House who live east of the Mississippi River appreciate that fact, and only regret that they have never been able to get it into the heads of the gentlemen who represent the territory where the Indian reservations are. Now, if the gentleman will permit, what I was going to ask the gentleman was, if he would be satisfied to strike out this provision of the bill providing for the sale of these lands to the highest bidder, but leave it so that it may be utilized for homestead purposes?

Mr. BURKE of South Dakota. Mr. Chairman, I have no objection to it whatever, except this: I know that it will require future legislation.

Mr. MANN. Why?

Mr. BURKE of South Dakota. Simply because before seven years have rolled around over half of this land that will ever be taken as a homestead, even if you should leave it for fifty years, will be taken, unless something very unusual happens.

Mr. MANN. The gentleman knows that not very many years ago in the Dakotas, which the gentleman and his colleagues so very ably represent, the people were moving away, if they could borrow, beg, or steal money enough to get away from there. Yet on those same lands many happy families are making more than a comfortable living now.

Mr. BURKE of South Dakota. In reply to the gentleman's reference to my State, I may say to him that from experiences had in the great city, a part of which he so ably represents upon this floor, I gained the impression that the conditions that prevailed in my own State were not confined within the limits of that State, but that they extended even into the great city of Chicago.

Mr. MANN. I am not speaking of the time of the panic. The gentleman understands very well that in nearly all of the western country where there is not plenty of water there have been times when settlers, as a result of a series of years of drought, have given up and gone away, have done their best to get rid of their lands on any terms. It is no reflection upon the country at all. Then in a short time people have learned that those same lands, when properly cultivated under favorable conditions, were just as valuable as any lands that could well be found. Now, the gentleman assumes that this land will not be taken for homestead purposes.

Mr. BURKE of South Dakota. I was going to say to the gentleman that under the law which provided that

the price should be \$6 an acre in Tripp County, as I stated in my opening remarks, out of 4,000 tracts to be disposed of, 1,911 tracts were taken at the highest price of \$6 an acre.

Mr. MANN. There is no limitation on the price in this bill.

Mr. BURKE of South Dakota. In the bill that is under consideration the price is to be fixed by appraisement.

Mr. MANN. And subject to reappraisement?

Mr. BURKE of South Dakota. And subject to reappraisement.

Mr. MANN. So that there is no limitation as to price?

Mr. BURKE of South Dakota. The only purpose of the provision that the gentleman is talking about is to complete the legislation. I may say that I have no interest in it further than I believe there ought to be some time fixed when this transaction will be completed so far as the Indians are concerned.

Mr. MANN. Oh, well, if this land should not all be taken up in seven years nobody is going to be specially injured by it; but the moment the land is taken up and becomes cultivated, say during the period of seven years, and people make it somewhat valuable, somebody will come in and take as homesteads the tracts of land that are left. I can easily remember—and I am not more than twice as old as the gentleman—a time in the State of Illinois when there was plenty of land that you could not persuade anybody to take for a homestead. Now you can not find any land there to take as a homestead.

Mr. BURKE of South Dakota. I know exactly what the gentleman has in mind; but with the conditions that have prevailed in this same locality it has been, and is

now, my opinion that practically all the land will be taken, just as was done in Gregory County, and the tracts that will remain undisposed of will be fragmentary.

Mr. MANN. If that be the case, what is the use of leaving this provision in the bill, so that if this land is not all taken within seven years the department will be urged by somebody to sell it out, perhaps in large tracts?

Mr. BURKE of South Dakota. I have stated to the gentleman that I have no pride of opinion as to that provision. I put it in and have given my reasons for putting it in. I believe it ought to remain there, because I believe that any administration, under conditions such as the gentleman has in mind that might arise, would bring to the attention of Congress the advisability of extending the seven-year period as might be thought desirable.

If this legislation was going to have any such effect as the gentleman anticipates it might have, there would be a suggestion to repeal it or enact something in its place. I will admit that it is legislating in advance, and for that reason I am not particularly concerned about it; but the gentleman knows that we have in every Congress bills coming in affecting some prior legislation, because the original legislation was not complete; and I call your attention to the Gregory County case. We have never had such legislation, so far as Gregory County is concerned, and it is closed up.

Mr. MANN. No; but I call the attention of the gentleman to this proposition: Legislation is largely a matter of precedent. The gentleman who prepared this bill may have had some other bill, some law, upon which to base the bill—

Mr. BURKE of South Dakota. Mr. Chairman, the first legislation of this kind was in the bill opening Gregory County, which passed the Fifty-seventh Congress, and that provided that the undisposed land should be sold after four years, and then the next bill that passed was for Tripp County, and, as I recall, that has this provision. Now, the bill that passed in the Sixtieth Congress, when I was not here, contained exactly this provision for Standing Rock and Cheyenne counties, and so the precedent is being followed, as the gentleman insists.

Mr. MANN. But, Mr. Chairman, I have not yet made my point. I say legislation is largely a matter of precedent. The gentleman puts this provision in this bill reported from his committee and says that it probably would not have any very great effect, so far as this particular opening is concerned, but it becomes a precedent. Now, there are a great many places in the United States still remaining as Indian reservations which will have to be opened within the space, probably, of a few years' time. Much of the land in those reservations is not suitable at all, in all probability, for homestead purposes.

I do not want to see any legislation which will permit a single owner or a single syndicate to acquire a large tract of land anywhere in the United States directly from the Government, and if these provisions remain in these bills, they form the precedents from which are drawn other bills, and gentlemen interested in the other bills will say, "Well, you have it in your bill, and so it ought to be in my bill," and the first thing you know we have propositions where people will acquire 100,000 acres in a tract.

Mr. BURKE of South Dakota. Mr. Chairman, I appreciate what the gentleman says, and will state for

his information that legislation similar to this was enacted in the law that authorized the sale of the Wind River and Shoshone reservations in Wyoming, and I have had under consideration the question of amending that law, because just such a condition as the gentleman speaks of is liable to occur in that reservation. The land is arid, and only a very small part of it has gone under the homestead law, because people could not make a living there, and we extended in the Indian appropriation act the provisions of the Carey Act to that reservation for the purpose of making it possible to have it settled upon and developed; and, recognizing the gentleman's argument, I will have no objection to this going out. I put it in to fit this particular case, and I appreciate fully that it does establish a precedent that will be followed and adopted where perhaps it ought not to be. However, so far as this reservation is concerned, I am personally familiar with the conditions, and I know it would not only do no harm, but would end the thing without further legislation.

Mr. MANN. Mr. Chairman, I may say to the gentleman, without detaining the committee, that a few years ago we had up here a proposition to sell, either directly or indirectly, one or two hundred thousand acres of land, as I understand it, to a syndicate for game purposes—to organize a game preserve or sporting preserve, or something of that sort. Congress did not see fit to pass the bill. I have been told that while at the time the bill was pending it was represented to us that the land was absolutely valueless for any other purposes, much of it is now settled upon by homesteaders, and it is just such things as that that make me question the desirability of precedents of this kind. I wanted to ask the gentleman one more question.

Mr. BURKE of South Dakota. Mr. Chairman, how much more time have I remaining?

The CHAIRMAN. Ten minutes.

Mr. MANN. Mr. Chairman, this bill takes the place of House bill 12437. In House bill 12437, as originally introduced, it provided for the payment of 3 per cent interest on the money deposited in the Treasury realized from the sale of these lands.

The committee reporting the bill has reported it with an amendment striking out 3 per cent and providing for the payment of 5 per cent interest, but in the substitute bill, which the committee now reports in lieu of the Senate bill, or Senate bill 183, the committee reports 3 per cent interest. I do not know whether that is an inadvertence or whether there is any reason for that. If there is any reason for it, I wish the gentleman would give the reason.

Mr. BURKE of South Dakota. I will say to the gentleman that for some time I have taken the position that where moneys go into the Treasury, unless there is a treaty provision requiring a high rate of interest to be paid, we ought not to pay more than 3 per cent—

Mr. MANN. I agree with the gentleman.

Mr. BURKE of South Dakota. I do, however, believe in observing any treaty obligation there may be on the part of the Government, unless there is some reason for doing otherwise.

Now, so far as this tribe of Indians is concerned and the other members of the Sioux tribe, when the treaty of 1889 was made it was fully expected that the surplus lands, after the allotments had been made, would be purchased by the Government from the Indians, as had been the practice, on the basis of their only having the right of occupancy, and that the consideration in any event would not be more than

\$1.25 an acre. Now the treaty of 1889 does provide that the proceeds from the sale of these lands shall go into the Treasury and be placed to the credit of the Indians and bear 5 per cent interest, and that the money shall be subject to appropriation at all times for their care, support, and civilization.

Now, having changed the policy of disposing of the surplus lands on the theory that the Indian was the owner of the land, and disposing of them for all that we can get out of them, which is a price averaging three or four times what they would have received had we carried out the policy that had previously prevailed, I feel that we are entirely justified in reducing the rate of interest from 5 per cent, provided in the original agreement, to 3 per cent. We are assuming now, in addition to looking after their education and moral welfare, to act as a trustee to manage and dispose of property and invest the proceeds for the benefit of the Indian, and, so far, without making any direct charge for the service. I believe that inasmuch as we are giving to the Indian indirectly, if not directly, a so much greater amount than was anticipated he would receive, we would be justified in fixing the rate of interest at 3 per cent instead of 5.

Mr. MANN. Then, in that connection, while it has been the historic policy of the Government to pay \$1.25 an acre for the school lands, where it paid anything, donated to the State, we have now changed that policy and pay \$2.50 an acre in these recent bills?

Mr. BURKE of South Dakota. We are paying \$2.50 an acre. That is what we agreed to in the treaty to pay the Indians in Gregory County, and it is believed that inasmuch as the lands are selling for \$4 and \$6, it would hardly be right to require them to accept as low

an amount as \$1.25, and \$2.50 was a compromise on the same basis that 3 per cent would be a compromise between 5 per cent and 1 per cent.

Mr. MANN. The gentleman says that we agreed by treaty to do that. He means the agent represented we would do it, without any authority.

Mr. BURKE of South Dakota. I said the treaty for the sale of that portion of the Rosebud Reservation, part of this same reservation, that was entered into for the sale of Gregory County. In that case the Government obligated itself to pay \$2.50 an acre for all the land, including sections 16 and 36, and then it was contemplated that the land should be disposed of at \$2.50 an acre, and sections 16 and 36 went to the State. So the Government paid for the school sections.

Now, Mr. Chairman, I call for a reading of the bill, unless some gentleman desires some time or wishes to ask some questions.

Mr. BARTHOLDT. I would like to be heard in opposition.

Mr. BURKE of South Dakota. I reserve the balance of my time.

Mr. BARTHOLDT. Mr. Chairman, I want to call the attention of the committee to section 10 of this bill, which seems to me—

Mr. BURKE of South Dakota. Will the gentleman consent to an interruption?

Mr. BARTHOLDT. Yes, sir.

Mr. BURKE of South Dakota. Does the gentleman think that the section is not drawn sufficiently drastic to protect the Indians and to make it impossible for liquor to be introduced in the country affected by the section?

Mr. BARTHOLDT. I want to ask my own questions, if the gentleman will permit me. In the first place, I

would like to ask him whether by this bill or by previous legislation these Indians have been granted the right of citizenship when living on allotted lands?

Mr. BURKE of South Dakota. I may say to the gentleman that all Indians that were allotted prior to May, 1906, and I will also say that most of the Indians on this particular reservation were allotted prior to May, 1906, by reason of their allotment, are citizens of the United States under a decision of the Supreme Court interpreting the general allotment act of 1887.

Mr. BARTHOLDT. If that is true, Mr. Chairman, then this provision is wholly unnecessary, for as I read a decision recently rendered by the Supreme Court in the Albert Neff case, an Indian who lives on allotted land becomes subject to the laws of the State and is free from police regulations by Congress. According to that decision we would have no right, either by this bill or at any time, to make a police regulations for the conduct of the Indian, because as a citizen and enjoying citizen's rights he would be subject to the laws of the State—in this case, of South Dakota. I notice, too, that this section is more drastic than similar sections passed by this House in similar bills. The old sections relating to this subject contained a limitation of twenty-five years, while this new section imposes prohibition upon the settlers on these lands, whether they are Indians or white settlers, for all time to come. In comparing the bills, I notice that this exact section 10, contained in this bill, was contained in another bill. It was stricken out by the action of the committee itself, and a more lenient section, limiting the time, was inserted by the committee.

Now, I should like to ask the distinguished chairman of the committee why he deems it necessary to insist on this section rather than the one that was usually inserted in bills of this kind?

Mr. BURKE of South Dakota. I will say to the gentleman, that until my attention was called to it I understood the provision was the same as in the other bills, with a twenty-five-year limitation.

Mr. BARTHOLDT. It is not.

Mr. BURKE of South Dakota. I will state that at the proper time I will probably offer to substitute the same language adopted in the other bills. I supposed that this bill was so drawn.

Mr. BARTHOLDT. If the gentleman will do that, while still not entirely satisfactory to me, I will accept it.

Mr. BURKE of South Dakota. I desire to do it, because I have some doubt about the section in its present form being sustained if it was so adopted.

Mr. BARTHOLDT. It will not be sustained if continued in its present form.

Mr. BURKE of South Dakota. I will be entirely frank with the gentleman.

Mr. GOEBEL. I just want a few moments.

Mr. BARTHOLDT. I think I better yield the gentleman time. How much time does the gentleman want?

Mr. GOEBEL. About ten minutes.

Mr. BARTHOLDT. I yield ten minutes to the gentleman.

Mr. GOEBEL. Mr. Chairman, in order that we may fully understand section 10, let me read that section:

Sec. 10. That every person who shall sell or give away any intoxicating liquors upon any of the land allotted or to be allotted, reserved, or disposed of within the tract described in section 1 of this act, upon conviction thereof shall be punishable by imprisonment for not more than two years and by a fine or not more than \$500, or by both such fine and imprisonment.

You will observe that by the act this provision becomes a stipulation running with the land, that there is no limitation upon time, so that these stipulations will continuously run with the land until the act itself is repealed. Any person who may purchase all or any part of this land takes it subject to the stipulations or covenants.

Now, it seems to me that, as a general proposition, it is unwise for the Government to insist upon such stipulations; they may affect the value of the land; not alone the value, but might lessen the number of bidders or might prevent the sale of the land. For you will observe that the purchaser or subsequent owner or owners may at all times be subjected to a penalty by imprisonment or fine, or both, for selling or giving away on his land any intoxicating liquors to any person, be he white, black, or red.

Mr. KAHN. Will the gentleman yield for a question?

Mr. GOEBEL. Yes.

Mr. KAHN. Does not the gentleman think that under that section as it is now worded, if a purchaser of the land were to plant grapes upon it and were to make wine out of the grapes, and were to give away a glass of wine made out of these grapes grown on his land, he would become amenable under this section?

Mr. GOEBEL. I think he would. Now, my friend from South Dakota [Mr. Burke], the chairman of the committee, is willing to accept an amendment which would limit this prohibition for a period of twenty-five years. Well, that is more reasonable; but I am opposed to the original proposition and to the limitation. I do not see the necessity for any legislation upon that subject. I suppose it is intended to protect the Indians or the white man from the Indians.

Mr. MURPHY. Will the gentleman yield to me for a question?

Mr. GOEBEL. Certainly.

Mr. MURPHY. If you wanted to have prohibition, do you not think there ought to be a limitation upon the land providing that if they sell liquor it shall revert to the Government?

Mr. GOEBEL. Congress, I assume, has the right to attach any reasonable condition to the sale of government lands, and if it has the right to prohibit the sale of liquors upon it, I assume also that Congress would have the right to stipulate as a condition that upon a violation the land shall revert back, but the money would have to be refunded to the purchaser. I doubt very much whether Congress would go that far.

Mr. STEPHENS of Texas. Is it not a fact—I have been told that it is—that South Dakota is a prohibition State by its constitution and laws?

Mr. STAFFORD. I can inform the gentleman, if my friend will permit me, that originally there was a constitutional inhibition.

Mr. STEPHENS of Texas. That is what I thought.

Mr. STAFFORD. But since then the citizens of that State, recognizing the impossibility of enforcing prohibitory laws where the sentiments of the people are opposed to such enforcement, have repealed that constitutional feature, and now it is a matter for the legislature to determine, and the State is no longer a prohibitory State by virtue of the constitution.

Mr. BUTLER. Do they have what is called local option?

Mr. BARTHOLDT. If the gentleman will permit me, even if South Dakota to-day were a prohibition State that merely corroborates the argument I made here, that this provision is wholly unnecessary.

Mr. STEPHENS of Texas. If it is a prohibition State, I do not think the United States Government should go in there and permit the sale of whisky at all; but permit me to say that I believe the State should control its own internal affairs.

Mr. BURKE of South Dakota. It is a matter for the municipalities to determine for themselves now.

Mr. BUTLER. Local option.

Mr. STAFFORD. But, to show the unfairness of this legislation, I wish to cite to the gentleman the action of this body many years ago, when we attached a similar provision for prohibition perpetually on reservation lands to be opened to settlement, when South Dakota had this constitutional provision forbidding the sale of intoxicants throughout the State. Since that time the State, in its good judgment in determining its internal policy, has decreed that it is no longer to have state-wide prohibition, and for good reasons. Yet the amendment that we attached to the bill opening some Sioux Indian lands to settlement still pertains, so that the law of Congress is binding in that little reserved tract against the determined policy of the State of South Dakota.

Mr. BURKE of South Dakota. Who has the floor?

Mr. STAFFORD. The gentleman from Ohio [Mr. Goebel] has the floor.

The CHAIRMAN. To whom does the gentleman from Ohio yield?

Mr. GOEBEL. I yield to the gentleman from Illinois [Mr. Sabath].

Mr. SABATH. I wish to state to the gentleman from Wisconsin [Mr. Stafford] that the gentleman in charge of this bill [Mr. Burke of South Dakota] has agreed to strike out section 10 and to substitute in lieu thereof another section.

Mr. BARTHOLDT. The twenty-five year limit?

Mr. SABATH. The twenty-five-year limitation.

Mr. STAFFORD. Has the gentleman from South Dakota explained the reason why this committee determined to engraft such a very far-reaching provision as that which is contained in this bill?

Mr. BURKE of South Dakota. Let me say to the gentleman—and perhaps it will prevent any extended discussion—that we have a bill that I expect to call up following this bill which is identical with it except as to territory, and this section which the gentleman is referring to is in the language I have stated I am going to substitute. The language that happens to be in this bill was in the original House bill as introduced, and in reporting the bill a copy of the original bill as introduced, and in reporting the bill a copy of the original bill was used by mistake. The section that the committee adopted is the section which I propose to offer as an amendment.

Mr. STAFFORD. Then, as I understand the gentleman, this recommendation is an inadvertence, and the committee did not intend to go to the extent of the folly that Congress committed years ago when they tried to determine the internal policy of the States for all time?

Mr. BURKE of South Dakota. What I desired to ask the gentleman from Wisconsin was, Who it is in South Dakota that is protesting against the conditions that prevail in what was formerly the Yankton Reservation, which is the only reservation disposed of with a prohibition condition?

Mr. STAFFORD. I assume, Mr. Chairman, that the people of South Dakota are capable of determining the policy which they wish to enforce within their borders.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BARTHOLDT. I yield five minutes more to the gentleman from Ohio.

The CHAIRMAN. The gentleman from Ohio [Mr. Goebel] is recognized for five minutes.

Mr. GOEBEL. Will the gentleman from South Dakota inform us just what his amendment is?

Mr. BURKE of South Dakota. The language is in the report, but I will hand the gentleman a bill which will show the language.

Mr. STAFFORD. I hope my friend from Ohio will allow me to answer the query propounded by the chairman of the committee before his time was concluded.

Mr. GOEBEL. Very well.

Mr. STAFFORD. Of course, Mr. Chairman, I am not particularly acquainted with the conditions that prevailed all over the State of South Dakota. It has been my pleasure to visit that State in prohibition days, and to have seen the so-called blind tigers. That was during the time when they had a state prohibitory law. I assume that the conditions have improved since then. I assume that the majority of the people of South Dakota were acting rationally and reasonably and intelligently when they determined to strike from their constitution that provision that had been found to be unworkable and a mere farce, so far as the enforcement of the liquor law was concerned.

Mr. MILLER of Minnesota. Upon what views does the gentleman base the statement that the attempt to enforce the liquor laws under that constitutional provision was a farce?

Mr. STAFFORD. As I said a few moments ago, Mr. Chairman, in reply to the inquiry of the chairman of the committee, I have had the pleasure of visiting South Dakota---

Mr. MILLER of Minnesota. Then the gentleman knows of his own experience that it is a farce out there?

Mr. STAFFORD. I have visited South Dakota, as I say, and it was a matter of common notoriety that anybody who desired to get liquor could get the vilest kind from these so-called black tigers—

Mr. KAHN. Blind tigers.

Mr. STAFFORD. Blind tigers—they might just as well be called black tigers as blind, because they sold such vile stuff, as bad as Montana whisky, that is reputed to be a combination of raw alcohol and tobacco juice.

Mr. SABATH. Has the gentleman tried that?

Mr. STAFFORD. I did not try to run up against any such proposition as that; but it was not difficult to obtain liquor all through that section of the country. The majority of the people, recognizing the inability to enforce a state-wide prohibition law, decreed that the constitutional provision should be abrogated and that it should be left to the legislature and to local communities to determine what should be their internal policy for the control of the liquor traffic.

Mr. BUTLER. Do we not understand that that is a local-option State?

Mr. STAFFORD. I am suggesting the reasons why the State of South Dakota repealed the provision in its constitution and left it to the legislature to determine the internal policy of the State.

Mr. BUTLER. I will say to the gentleman that if they put any provision in this bill authorizing the sale of liquor to Indians, a quorum will be required before the bill is passed.

Mr. STAFFORD. Oh, we are all in favor of restricting the sale of liquor to Indians.

Mr. GOEBEL. Mr. Chairman, the proposed amendment is not, of course, as drastic as the original provision.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BARTHOLDT. Mr. Chairman, I yield five minutes more to the gentleman.

Mr. GOEBEL. Mr. Chairman, if it was the intention to safeguard the Indian at a time when he was under the guardianship of the Federal Government, then it was proper that the Government should throw about him such restrictions as were absolutely essential for his welfare, but when he became a citizen of the United States, exercising all of the rights and privileges as such, then he stands in no higher or better position than any other citizen, and to extend to him this additional protection gives him rights not accorded to any other citizen.

Again, as a citizen, if the Indian be one, he is subject to all laws, and if the laws of South Dakota prohibit the sale of liquor to an Indian or to any person, then the Indian, or as a person, comes within the provisions of that law, and my contention is that Congress ought not to legislate for his particular benefit if all his rights and the rights of every other man is fully protected by the laws of the State.

So far as the Government is concerned, these two classes of Indians—Indians who are and Indians who are not citizens—over Indians who are citizens the Government exercises no further control. Indians who are not citizens are still under the control and guardianship of the Government.

Mr. MANN. Will the gentleman yield for a question?

Mr. GOEBEL. Yes.

Mr. MANN. Assuming that the General Government has some responsibility for the care of the Indians out of the National Treasury if they do not have funds with which to support themselves, which does not seem to be a violent assumption in view of the appropriations we make, does not the gentleman think the Government has such an interest in the Indians that it will properly protect them from penury and spoliation by preventing for at least a limited period the sale of liquor to them?

Mr. GOEBEL. Oh, I will concede that as long as the Indian is the ward of the Federal Government that the Federal Government has a right to impose any condition as to him. But that is not the question here. You are selling lands of the Government to anyone that might purchase.

Mr. MANN. We are selling lands of the Indians.

Mr. GOEBEL. Very well, put it that way, then. We are selling lands to the public. You are imposing now as a condition precedent a restriction or covenant with reference to the sale of intoxicating liquors upon these lands.

Mr. MANN. The gentleman understands that in the sale of these lands to the white people probably it may be a section adjoining a section owned by an Indian. It may be surrounded—they are all interlocked and interlaced—and that if the Indians do lose their property in the end, we will be asked to support them, and probably will do it, although we would not if I had my way about it.

Mr. GOEBEL. There would be no legal obligation to do so.

Mr. MANN. We just made an appropriation to take care of some Indians in Florida, and nobody knows how long ago they parted with their lands.

Mr. BUTLER. It is proposed, as I understand, by this bill to offer for sale to white men, or men of any color, these lands included within this reservation.

Mr. MANN. Unallotted lands.

Mr. BUTLER. Now, does the Government not still assume a guardianship over the fund of the Indians by retaining the amount that the lands sell for?

Mr. GOEBEL. What has that to do with the sale of the lands?

Mr. BUTLER. A good deal to do with the conditions.

Mr. GOEBEL. What has that to do with the condition which imposes—

The CHAIRMAN. The gentleman's time has again expired.

Mr. BARTHOLDT. How much time have I left, Mr. Chairman?

The CHAIRMAN. The gentleman has thirty-six minutes remaining.

Mr. BARTHOLDT. I yield ten minutes to the gentleman from Ohio [Mr. Goebel].

Mr. GOEBEL. Now, then, to answer the gentleman from Pennsylvania [Mr. Butler], you are imposing a restriction upon the purchaser of the land and also making it a covenant that runs with the land.

Mr. BUTLER. But I imposed the restriction before the gentleman purchased it. The gentleman will not be compelled to purchase the land.

Mr. GOEBEL. My answer is by asking you, Why do you throw this land open to the public—

Mr. BUTLER. The gentleman from Illinois stated the reason, which has satisfied me.

Mr. GOEBEL. The reason that is urged is that we ought to retain some control over the Indian; it is the Indian we are seeking to protect. Now, then, I am not

going to say that we ought not to protect the Indian. You still can protect the Indian under existing laws, and if he violates any law he will be punished.

Mr. BUTLER. Certainly the Indian will be punished, but how about the man who sells him rum?

Mr. GOEBEL. Or any person that might sell him liquor would be punished, under the general law. Coming back for the moment to the question whether or not we ought to specifically protect the Indian, who has become a citizen, and whether the police power of the State applies, let me read you the decision of the Supreme Court touching upon those questions.

Mr. BUTLER. That will be interesting.

Mr. GOEBEL. Let me say at the outset that the relationship of guardian and ward no longer exists between the Government and the Indian when he becomes a citizen. Now, then, this is the case—I am reading from the "Matter of Heff," in One hundred and ninety-seventh United States Reports. The court says:

The recognized relation between the Government and the Indians is that of a superior and inferior, whereby the latter is placed under the care and control of the former.

In this Republic there is a dual system of government, national and state. Each within its own domain is supreme, and one of the chief functions of this court is to preserve the balance between them, protecting each in the powers it possesses and preventing any trespass thereon by the other. The general police power is reserved to the States, subject, however, to the limitation that in its exercise the State may not trespass upon the rights and powers vested in the General Government. The regulation of the sale of intoxicating liquors is one of the most common and significant exercises of the police power. And so far as it is

an exercise of the police power it is within the domain of state jurisdiction. It is true the National Government exacts licenses as a condition of the sale of intoxicating liquors, but that is solely for the purposes of revenue and is no attempted exercise of the police power. A license from the United States does not give the licensee authority to sell liquor in a State whose laws forbid its sale, and neither does a license from a State to sell liquor enable the licensee to sell without paying the tax and obtaining the license required by the federal statute.

It does not apply to the allottee Indian, who has become a citizen under the act of February, 1887.

Mr. SABATH. May I ask the gentleman what case he is reading?

Mr. GOEBEL. I am reading the case of Matter of Heff, in One hundred and ninety-seventh United States. In that case the Supreme Court laid down the rule that the relationship of guardian and ward, in reference to the Indian who has become a citizen, no longer applies, and that the Indian would be subject to all of the laws of the State; that the regulation of the sale of intoxicating liquors comes within the exercise of the police power of the State. The Indian as well as the white man is fully protected by the laws of the State, and the Indian not a citizen is fully protected under the federal laws now in force.

The CHAIRMAN. Does the gentleman yield to the gentleman from New York?

Mr. GOEBEL. I yield to the gentleman.

Mr. PARSONS. In view of the decision of the Supreme Court which you read, the only way which Congress can do anything on its part to prevent the sale

of liquor to the Indians is by attaching a condition to the lands, as done in this bill. Is not that so?

Mr. GOEBEL. Why, not at all. Why attach a condition that if violated would be in violation of a state law?

Mr. PARSONS. But suppose Congress thinks that there may be certain localities in a State where public sentiment was not strongly in favor of laws against the liquor traffic, and that therefore it ought to do something for the benefit of the Indian; is not this the only way in which it effectively can do anything?

Mr. GOEBEL. That the Government may attach any reasonable conditions I do not dispute. I make no question as to the power of Congress; but is it advisable? If I am the purchaser of this land I would be subject to punishment under the laws now in force. What sense is there in attaching to this bill such provision, even with a limitation of twenty-five years?

Mr. PARSONS. Simply to make it doubly sure that liquors will not be sold to the Indians.

Mr. MURPHY. Why do we declare him to be a citizen of the United States if he is incompetent?

Mr. GOEBEL. Why, I am assuming that he can take care of himself.

Mr. GRONNA. Will you allow me to ask you a question?

Mr. GOEBEL. Certainly.

Mr. GRONNA. Does the gentleman not know that in communities where prohibition has existed for a number of years it does protect? This applies not only to the Indians, but to the white man. Furthermore, who would protect the white man from the Indians unless this provision is inserted in the bill prohibiting the sale of liquor to the Indians?

Mr. GOEBEL. If a man violates any state law, he should be amenable to the State.

Mr. GRONNA. If we open to settlement reservations in a State that has a prohibitory law, the gentleman well knows that there are no officials to look after either the white man or the red man, to begin with.

Mr. GOEBEL. Why, I do not know what the conditions are.

Mr. GRONNA. Well, I want to say to the gentleman that I do.

Mr. GOEBEL. I assume that you have laws that will fully protect you.

Mr. GRONNA. I understood the gentleman to say that he is opposed to the general law that applies to all these reservations.

Mr. GOEBEL. I am opposed to attaching to the sale of any reservation conditions such as are proposed in this bill.

Mr. GRONNA. Does the gentleman believe it would be safer on a reservation where liquors are permitted to be sold? Would the gentleman not buy land on a reservation where protection is given by the Government, even if such reservation is located in a prohibition State?

Mr. GOEBEL. Oh, I do not know what I would do. At present I would want to get the land without any conditions attached. You must also bear in mind that when the lands are sold there is no longer a reservation, and the laws of the States apply.

Mr. MILLER of Minnesota. Will the gentleman permit a question? I understand he is opposed to attaching this sort of a restriction to the sale of these lands. Can he suggest any other method by which the Indians can be protected?

Mr. GOEBEL. Under your state laws are the Indians not fully protected?

Mr. MILLER of Minnesota. In the State of Minnesota?

Mr. GOEBEL. Yes; in your State.

Mr. MILLER of Minnesota. Yes.

Mr. GOEBEL. Now, what further protection is necessary? Do you mean to say that you can not enforce your laws and protect the Indians?

The CHAIRMAN. The time of the gentleman has again expired.

Mr. BARTHOLDT. I yield five minutes more to the gentleman.

Mr. MILLER of Minnesota. That is not the question at all, as to what the State of Minnesota or the State of South Dakota may see fit on its own judgment to do. This is a question as to the attitude that Congress shall assume toward these Indians who are wards of the Government. If they need our protection until they secure allotments and for a period, we will say, of twenty-five years thereafter, is it not the duty as well as the power of Congress to give them that protection? And if the only way in which we can give them protection is to put restrictions on the land, should not that be done?

Mr. GOEBEL. It is the duty of Congress to protect the Indian so long as he is a ward of the Government, but the moment he becomes a citizen he passes beyond the control of the Federal Government and is subject to all the laws of the States, and the laws of the States ought to be looked to to protect him.

Mr. BURKE of South Dakota. Does not the gentleman think that during the period that the Government has control of the property of the Indian it also ought to have some voice in other things that affect him;

Mr. GOEBEL. Oh, but you do more than that in this bill. You are affecting the title to property. You are affecting rights of purchasers.

Mr. BUTLER. No; you have not any rights in the matter.

Mr. GOEBEL. As a purchaser I have.

Mr. BURKE of South Dakota. But you do not have to purchase.

Mr. BUTLER. No; that is the point. You do not have to purchase. You do not need to go there unless you choose to.

Mr. GOEBEL. That is true.

Mr. BUTLER. If you go there at all, you go there voluntarily.

Mr. GOEBEL. But the Government is opening up this reservation and inviting purchasers, and when it invites purchasers it ought to protect them.

Mr. BUTLER. That is the Government's own business—whether or not there shall be a restriction put upon the land.

Mr. GOEBEL. That is true.

Mr. BUTLER. I have a decided opinion upon the question of the sale of rum to the Indians.

Mr. GOEBEL. And so have I. Nevertheless, I do not see what that has to do with the question before us.

Mr. BARTHOLDT. Mr. Chairman, how much time have I remaining?

The CHAIRMAN. The gentleman has nineteen minutes.

Mr. BARTHOLDT. Mr. Chairman, it is perfectly evident that section 10 of this bill, even if it be modified as suggested by the chairman of the Committee on Indian Affairs, would be unconstitutional, in accordance with the decision cited by the gentleman

from Ohio [Mr. Goebel], a decision of the Supreme Court of the United States.

Mr. PARSONS. The gentleman from Ohio simply stated that this provision was a valid one if we cared to impose it.

Mr. GOEBEL. The gentleman certainly misunderstood me very greatly.

Mr. BARTHOLDT. He could not state anything else if he based his argument on that decision, which simply says in plain words that as soon as an Indian becomes a citizen of the United States he becomes subject to the laws of the State where he resides, and is free from the police power of the Congress of the United States; that is all.

Mr. PARSONS. Yes; but he did admit that you could attach this condition to the land, and the reason for attaching it is just because that is the only way in which we can do our part.

Mr. BARTHOLDT. I do not admit that, and it would be unconstitutional if you did attach it, according to that decision.

Mr. PARSONS. He admitted that you could do it.

Mr. BUTLER. I will state to my friend that whether we can do it or not, we will do it.

Mr. BARTHOLDT. I will be glad to yield to the gentleman at the proper time, but right now I want to say just a word about the practical operation of the provision as it has existed in previous laws. A case was called to my attention some years ago of a citizen of Missouri, a resident of my district in the city of St. Louis, who was on the way to the Pacific coast. The railroad crossed an Indian reservation in the State of Nevada. On that Indian reservation the train stopped for refreshments. As the gentleman stepped off the platform of the train he was approached by an Indian who showed every sign of suffering, and the Indian

asked him whether he could not have a drink out of his flask. My constituent did not have a flask with him, but he returned to his car and borrowed a flask from one of this fellow-passenger, and, moved by pity and sympathy, he handed the flask to the suffering Indian. The Indian took it and used it and handed it back, and just at that moment a United States marshal stepped up and arrested the gentleman for giving liquor to an Indian. The result was that this man, who happened to be unaware of the laws against such a practice, was tried and convicted and sent to the penitentiary for two years, and the United States marshal, who, as was discovered afterwards, had induced that Indian to feign sickness and ask for the liquor, lined his pockets with the fees that resulted from the fine in that case.

I merely call attention to this one incident, which came to my notice through his friends trying to procure a pardon for the man, who had thus innocently and through his compassion violated the laws of the land, as an example of the practices under the provision which we are now discussing.

Mr. PAYNE. Will the gentleman yield?

Mr. BARTHOLDT. Yes.

Mr. PAYNE. Does not the gentleman know that it is impossible for that case to be duplicated now, since we have abolished the fees of marshals and pay them a salary?

Mr. BARTHOLDT. I am very glad of the change, but I am quite certain that even the new system is subject to abuses of this kind.

Mr. KAHN. Does the gentleman think the marshal divided his fees with the Indian?

Mr. BARTHOLDT. I do not know. The evidence does not show.

Mr. SABATH. As a rule marshals do not divide with anyone if they can help themselves.

Mr. BARTHOLDT. Mr. Chairman, the contention of the gentleman from Ohio is that in accordance with the decision of the Supreme Court cited by him, and this seems to be the only decision on record on this subject, the Indian becomes independent of police control exercised by Congress and becomes subject to the laws of the State immediately upon his acquiring the rights of a citizen, and therefore, while these provisions may have been proper and right in the past, after the Supreme Court has spoken on this subject it seems to me this House ought to be guided by that high authority. While I am in full accord with the opinion of the gentleman from Pennsylvania [Mr. Butler] to the extent that the Indian ought to be protected as long as he is a ward of the Government, I am just as fully determined to give him his rights as a citizen when he becomes a citizen, and free him from the bondage which has existed heretofore, and I think that we can trust our state governments to the extent of taking care of him when he becomes amenable to their laws as much as we can trust the Government of the United States in that respect.

I reserve the balance of my time.

Mr. BURKE of South Dakota. Mr. Chairman, I yield three minutes to the gentleman from Pennsylvania [Mr. Butler].

Mr. BUTLER. Mr. Chairman, I do not believe in naturalizing the Indian for the purpose of making him a receptacle for rum. I think that only the moral feature enters into this discussion. The question is, Shall there be imposed upon this land a condition which the Government has a right to impose—and I desire to say that it is not a very great burden to have imposed upon

the land under present circumstances—which creates an absolute prohibition against the sale of liquor thereon? I own a piece of property in the State of New Jersey, at Longport, a little way below Atlantic City, and on mine, as well as upon every property in the village, there is imposed a restriction that no liquor shall be sold on the premises. I have no feeling against the sale of liquor under proper limitations and in proper places, but I do have a most decided conviction upon the propriety of selling it to Indians and a decided protest to make against any man who will try in any way to furnish liquor to these people.

Mr. BARTHOLDT. Will the gentleman permit a question?

Mr. BUTLER. With pleasure.

Mr. BARTHOLDT. Would the gentleman be willing at all to set any limit to the bondage in which the Indian is kept? Does he not concede that it is best for an Indian to acquire a sufficient degree of civilization to control himself eventually in matters of habit and custom?

Mr. BUTLER. That might be; but I do not propose to change my view, and I shall not entertain at all the suggestion of my friend from Missouri. [Laughter.] My judgment is made up and is the result of a conviction of a lifetime.

The Indian should not be tempted, if it is possible to keep the tempter away from him. Rum should not be sold to him, and no one should be permitted or encouraged to make the sale to him. I can see no reason why the Government should not impose this condition upon this land.

Mr. MURPHY. Then we ought to make this just as strong as possible, ought we not?

Mr. BUTLER. Yes, sir. Make it as strong as possible. You cannot make it too strong for me. Mr. Chairman, this land, as I understand, is within the boundaries of an Indian reservation. Is that right?

Mr. BURKE of South Dakota. Yes, sir.

Mr. BUTLER. It is proposed now to make a sale of it to somebody of some color, white or black, it does not matter. This being so, the Government has the right to impose at this time upon these titles this condition.

Mr. BARTHOLDT. But if the lands are allotted it is no longer an Indian reservation.

Mr. BUTLER. If the lands are allotted it will be no longer an Indian reservation. It is where, as I understand, the Indian has always lived and where he is going to live, and I believe in keeping the sale of liquor out of his neighborhood, and for that purpose I propose in a kind and gentle way to suggest to gentlemen that if there is to be any attempt made to prevent the restraint being imposed upon this title they had better have a quorum of the House present to insure the success of the attempt.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BURKE of South Dakota. Mr. Chairman, if there is no further debate, I would like to have the bill read.

The CHAIRMAN. The amendment will be reported in lieu of the original bill, but will be reported under the five-minute rule for amendment.

The Clerk proceeded with the reading of the bill.

Mr. BURKE of South Dakota. Mr. Chairman, I ask unanimous consent that the bill which is just about to be read be amended as it was amended by the Committee on Indian Affairs that reported the House bill to the House.

Mr. BUTLER. Mr. Chairman, reserving the right to object—

Mr. BURKE of South Dakota. That the bill which the Clerk is now about to read is not the bill that was reported by the committee, the committee recommending that the Senate bill be amended by striking out all after the enacting clause and inserting in lieu thereof the bill H. R. 12437. By some inadvertence the bill that was used was the original House bill before it was amended in committee, and there are a few slight amendments.

The most important one in it is the substitution of this section 10 by the section as it appears in the bill. The others are slight amendments.

Mr. BUTLER (continuing). Reserving the right to object, Mr. Chairman, I would like to inquire of the gentleman from South Dakota if the amendment which he suggests is made—and I am willing to take his statement and vouch for the truthfulness of it—will it prohibit the sale of liquor within the present reservation for the next twenty-five years?

Mr. BURKE of South Dakota. It will, just as far as it will be possible to prohibit by law, and I think it a better provision than the other, because it has been passed upon by the courts and been sustained. There is no question about it.

Mr. BUTLER. That satisfies me.

The CHAIRMAN. The Chair suggests to the gentleman from South Dakota [Mr. Burke] that, in the opinion of the Chair, the better parliamentary practice, before the gentleman from South Dakota asks the reading of the first section of the bill, would be to offer that entire bill as a substitute, giving notice that he will strike out the other sections as they are reached.

Mr. BURKE of South Dakota. I think, Mr. Chairman, as the sections are read I will offer these amendments. They are very slight.

The CHAIRMAN. Very well. The request is withdrawn. The Clerk will read.

The Clerk read as follows:

Sec. 2. That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: *Provided*, That prior to said proclamation the allotments within the portion of the said Pine Ridge Reservation to be disposed of as prescribed herein shall have been completed: *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Phillippine insurrection, as defined and described in sections 2304 and 2305 of the Revised Statutes, as amended by the act of March 1, 1901, shall not be abridged.

Mr. BURKE of South Dakota and Mr. SABATH arose.

The CHAIRMAN. The gentleman from South Dakota, chairman of the committee, is recognized.

Mr. BURKE of South Dakota. I desire to offer an amendment. On line 12, page 12 of the bill, after the word "said," I move to strike out the words "Pine Ridge" and insert in lieu thereof the word "Rosebud."

The CHAIRMAN. The gentleman from South Dakota offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 12, line 12, strike out "Pine Ridge" and insert "Rosebud."

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was agreed to.

Mr. SABATH. Mr. Chairman, I desire to offer an amendment.

The CHAIRMAN. The gentleman from Illinois offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 12, line 7, after the word "prescribe," insert "that all applications for registration must show the applicant's name, post-office address, age, height, and weight, and be sworn to by them before any county or district judge where such applicant resides, and other."

Mr. SABATH. This amendment will fit right in that provision.

Mr. MANN. Not in that place.

Mr. SABATH. Read that entire section with that amendment down to that point and see whether it will.

The Clerk read as follows:

That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe that all applications for registration must show the applicant's name, post-office address, age, height, and weight, and be sworn to by them before any county or district judge where such applicant resides, and other, and the manner in which the

land may be settled upon, occupied, and entered by persons entitled to make entry thereof.

Mr. SABATH. Is there any objection to this amendment?

Mr. BURKE of South Dakota. Why, certainly there is objection to it.

Mr. SABATH. Why, then, I desire to be heard on the amendment.

Now, Mr. Chairman, the last proclamation of the President had the following provision:

All applicants for registration on the lands must show the applicant's name, post-office address, age, height, weight, and be sworn to, either at Aberdeen, etc., or be sworn before some notary public designated by the superintendent.

That necessitated each and every applicant to go in person to the place designated in the President's proclamation to register, which is in close proximity to the lands to be opened. I am informed that over 30,000 people were obliged to travel hundreds, yes, thousands, of miles to register in accordance with the proclamation, which meant an aggregate expense of over \$4,000,000, or nearly as much expense as the lands were worth. Now, I propose by this amendment to give a person who has not enough money to go there in person to register a chance and an opportunity to register in the county where he resides. I think it is a just amendment, and should be adopted.

I do not know why we should exclude the poor man, whom we desire to take care of, by forcing on him a provision that makes it obligatory upon him to travel thousands of miles to register. Under my amendment you will observe that there can be no fraud perpetrated. Each and every applicant must appear in that section of

the country where he resides before the county judge or the circuit judge, who, as a rule, are more likely to know these applicants than strange and favorite notaries. They will be sworn to, the same as they would be before the notaries that are to be designated by the superintendent. I honestly believe it will aid materially in giving an opportunity to all deserving and well-meaning people who are trying to secure a homestead for themselves. For that reason I believe that it would be no more than right that these people should have an opportunity, and I hope that this amendment will prevail. [Loud applause.]

Mr. GRONNA. Will the gentleman allow me to ask him a question?

The CHAIRMAN. The time of the gentleman has expired.

Mr. SABATH. Mr. Chairman, I ask unanimous consent that I may be permitted to proceed for five minutes.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. SABATH. It is just for the purpose of answering the gentleman's question.

Mr. GRONNA. Does the gentleman believe that any homestead settler, if he wanted to make his selection for a home, is willing to file on land unless he has personally seen it?

Mr. SABATH. But it does not follow that he will draw a piece of the land. He first registers, as I understand.

Mr. STAFFORD. Can not the persons who are living at a distance from the reservation proposed to be opened ascertain from the department a general idea as to the character of the soil, and in that way determine whether it is suitable for their purposes or not?

Mr. SABATH. Yes; they can.

Mr. STAFFORD. I would like to ask the gentleman if it is not the purpose of the proposed amendment not to give the advantage to those living in the immediate vicinity of the reservation, but to give people from all over the country an equal chance without the imposition of an unnecessary and expensive railroad trip?

Mr. SABATH. That is the purpose, and I believe, and am of the opinion and belief, that those who reside 500 miles away from the reservation, or a thousand miles, are as good citizens as those who reside near such lands. Furthermore, I believe that we should not legislate in the interests of the railroads and to the detriment of the public. The railroads derive the greatest benefit out of the procedure and out of the system that has been pursued in our opening of these reservations.

Mr. GRONNA. Now, will the gentleman permit me?

Mr. SABATH. I will as soon as I have finished. I am informed that over 30,000 people went either to Aberdeen, Le Beau, Lemmon, Mobridge, or Pierre, S. Dak., or to Bismarck, N. Dak., which were the places designated for registration of the unallotted, unreserved lands within the Cheyenne River and Standing Rock Indian reservations, in the States of North Dakota and South Dakota. All of these people lost a great deal of valuable time, spent a lot of money for railroad fare, were held up in "temporary hotels," paid seven prices for something to eat, and endured great hardship. I have personal knowledge of over 30 cases wherein honest and well-meaning residents in my district traveled great distances to reach these places, who incurred expenses from \$125 to \$150, and these people have informed me after their return from the places where they were obliged to go in order to register of the hardships and inconveniences which they were

obliged to endure and contend with. They told me of the many "sharpers," "fake promoters," and "bunko steerers" against whom they were obliged to constantly guard, and were it not for the fact that they were intelligent and honest men, they might have fallen victims to the many "schemes" which were devised by unscrupulous fakirs and gamblers to relieve the home seekers of their money. Promises were made to them that if they would pay from \$50 to \$100 apiece they would be successful in the drawings. How many thousands of honest home seekers like these men were have fallen victims to such cheap and lowly adventurous "grafters" no one can tell. By the adoption of my amendment every person will have a fair and honest chance to register without incurring any loss of time or paying railroad fares, even at excursion rates, to such places. These excursions to the places of registration have been a source of great revenue to the railroads, and I do not propose to legislate for their particular benefit.

All of the hardships endured and expenses incurred by these home seekers were for what purpose? Just for the purpose of registering. The drawing does not take place at the same time. So why can not they register in the locality, in the county, or in the district where they reside? And if they are fortunate enough to draw or to win an allotment of a homestead, then they have plenty of time to go down there and make a proper selection.

Now I yield to the gentleman from North Dakota.

Mr. GRONNA. I simply want to say, in reply to the gentleman from Wisconsin, that the parties who live nearest by have their own lands, and they can not take any more.

Mr. STAFFORD. But the gentleman knows that they have children growing up that are entitled to lands in

these reservations, and that they will have superior knowledge as to the character of the lands and will be able to settle on the lands much easier than those who have to go to a large expense when living at a distance from the reservation.

Mr. GRONNA. Not at all, let me say to the gentleman. I believe that unless these people go and see the land that much of it will not be taken up at all, especially because of the high price that they are to be sold at.

Mr. SABATH. The gentleman need not be alarmed. I assure him that it is not necessary to go down there. There will be plenty of applicants, and if there is any land left after the drawing takes place, I will give him my word that I shall supply him with applicants for the entire tracts that may remain unallotted or unsettled, and they will all be excellent people, who will make splendid farmers and develop these lands to such an extent that the good people in his own district will be benefited, and especially so if they come from my district in Chicago.

Mr. GRONNA. I am very glad to know that.

Mr. SABATH. Yes; they will all be mighty good settlers, good farmers, and agreeable neighbors.

Mr. CARTER. Can the gentleman give any definite information as to the time that may elapse between the registration and the entry on these lands?

Mr. SABATH. It depends upon the proclamation of the President. As a rule it takes two or three months, and sometimes four months.

Mr. CARTER. I think from one to two months, or something like that.

Mr. SABATH. It may be as short a time as that.

Mr. CARTER. It necessitates two trips to the land, does it not?

Mr. SABATH. Yes; it always does.

Mr. MANN. Two trips to the land for those that are lucky enough to get any land and one trip to 99 per cent of the people who go and do not get any land.

Mr. SABATH. That is correct.

Mr. MANN. It is a safer game to play the tiger in Chicago and lose than to take a chance in this government lottery.

Mr. SABATH. We have no "tiger," but some "wolves," as I understand, in Chicago.

Mr. MANN. Not under a Republican administration.

Mr. BURKE of South Dakota. I desire to be heard on this admendment, but I think the gentleman from Wisconsin [Mr. Morse] desires to oppose it.

The CHAIRMAN. Is the gentleman in favor of this amendment?

Mr. MORSE. I am in favor of what is attempted to be done by the amendment.

The CHAIRMAN. The Chair will recognize the gentleman from Wisconsin.

Mr. MORSE. Mr. Chairman, I am of the opinion that most of these bills for opening homestead land should be entitled "A bill for the encouragement of the sale of railroad tickets." [Laughter.] I am very much in favor of what is attempted to be done by the amendment of the gentleman from Illinois [Mr. Sabath]. The fact of the business is that the Government conducts an immense lottery, and that 99 per cent of the people pay good money and draw blanks. It costs \$50, \$60, or \$70 each, and it has been estimated as high as \$100 each, for people to go out where these openings are held, because many of them come from away east of Chicago and take chances on getting land. Now, the land hunger is very strong in the average human breast, and the mere fact that 100,000 people will go clear

across the continent to take a chance, when they know there will not be to exceed 1,000 homesteads opened, indicates the desire to get them. I believe that there should be a way provided whereby every man who desires to take a chance could go before his county clerk, or some officer in the county, and pay a small fee, enough to pay the expense of conducting the operation, and then, having registered, have his name put into the hat the same as the lottery is now conducted.

If that is done, I believe you will get better homesteaders. You will get people who are desirous of living on the land, and not people who are out on a pleasure trip, who stop off there and register just for the fun that there is in it. Therefore I am heartily in favor of the proposition of the gentleman from Illinois [Mr. Sabath]. The proportion of the amount of land drawn to the money paid in railroad fares, hotel bills, and expenses of the trip is getting to be almost a national scandal, and I am certain that at this time this committee should adopt a resolution or an amendment to this bill which will give the men in New Jersey and the men in New York the same chance as the men who live in North Dakota or in California. [Applause.]

Mr. BURKE of South Dakota. I may say that I anticipated there would be some opposition to this provision to which the gentleman from Illinois [Mr. Sabath] has offered an amendment, and I am not surprised that it appeals to some Members. But, Mr. Chairman, it would be so impracticable as to be absolutely impossible to administer the law if this amendment should be adopted.

To begin with, it reverses the policy of the Government from the time the public lands were disposed of to settlers under any of the laws governing settlers upon

the public domain. At no time in the history of the country has there been any law that permitted a man to make an entry upon the public domain without going into the jurisdiction of the State or Territory where the land is located, barring a survivor of the civil war. A soldier of the civil war was permitted, through power of attorney, to file a declaratory statement, which merely reserved the land for six months, and when he made his entry therefor he had to go into the State where the land was located or the Territory in which it was located.

Mr. STEPHENS of Texas. Is it not a fact that you can make a mineral entry under the mining laws of the United States by giving a friend of yours in the mining country a power of attorney to act for you?

Mr. BURKE of South Dakota. That may be true as to mineral entries, but there is no settlement required upon a tract of land under the mineral laws.

Mr. STEPHENS of Texas. But the gentleman will admit that you must do \$100 worth of work within ninety days and comply with the local regulations of that State or district.

Mr. BURKE of South Dakota. Now, Mr. Chairman, the practice up to a few years ago when lands were to be offered for sale was to open them up to settlement under the homestead laws, and persons went out and took their chances in making selections, and finally there got to be such a demand (in Oklahoma 115,000 people went there to file) that it became necessary to devise some other means of disposing of the lands, so that it could be done in an orderly way, and therefore this system that has prevailed now for several years requiring registration was adopted, and the law, or the regulations, I may say, have been modified and changed until it is admitted by those who have had an

opportunity to see its workings that it comes about as near being perfect as is possible to have any system for this purpose.

Now, to say that any person anywhere in the United States—

Mr. SABATH. Any citizen.

Mr. BURKE of South Dakota. Any citizen in the United States may go before any officer who is empowered to administer an oath—

Mr. SABATH. I do not go that far.

Mr. BURKE of South Dakota. Well, the clerk of the court—I do not care who it is—and permit him to register, will simply mean that you will have such a number of applicants that it will be absolutely impossible to work it in a practical and orderly way.

Mr. SABATH. In what way will it be impossible to work it, will the gentleman state? Will it make any difference whether you have five or ten thousand more applicants?

Mr. BURKE of South Dakota. You will probably have as many million applicants.

Mr. SABATH. Oh!

Mr. BURKE of South Dakota. Because we have now as high as a hundred thousand.

Mr. SABATH. Well, I am willing to pay two or three more clerks \$5 or \$10 more to save the people of this country that many millions.

Mr. BURKE of South Dakota. Now, Mr. Chairman, there is no bounty about this. The Government is charged with the responsibility of selling this land for the benefit of the Indians, and it is due to the Indians that the Government do it in some orderly way. It is also desirable that we get a class of citizens that will at least take enough interest in the initiation of the claim to go where the land is.

If persons could register at any place in the United States at a cost of only 25 cents, the registration by impecunious and aimless adventurers would be almost innumerable. The requirement of this plan that the applicants visit specified registration points near the land is not a new departure in the administration of the public-land laws. Congress has heretofore thought it wise to require all persons who seek entry under either the homestead law, the preemption law, the timber-culture law, the desert-land law, or the timber and stone law to go to the land district in which the lands are located to make their filings. The wisdom of this provision is found in the fact that, if applications could be presented from any point in the country, very many aimless adventurers who could barely raise the price of a filing fee would make a filing to the detriment of the bona fide home seeker.

The advocates of a plan which would permit registration from all parts of the United States seem to proceed on the assumption that the Government owes a home as a bounty to every one of its citizens, and that therefore each of them has a right to present his application without going to the land, and at a cost which is no greater than the cost to other applicants who happen to reside in the vicinity of the land office. As I have remarked, the prime object of the opening of Indian lands is that distribution which will best advance the interest of the Indians, and not the giving of a bounty to the citizens of the entire country. These lands belong to the Indians and are being sold for their benefit. They do not belong to the Government and can not be distributed as bounty to its citizens. The Government acts only as an agent or trustee in the sale of the lands, and must dispose of them in the manner which will best advance the interest of the Indians. The

most desirable plan to accomplish this end is the one which tends greatest to limit the number of applicants to approximately the number of farms to be distributed and the discouragement of aimless adventurers and speculators, and the cost of a trip to a registration point gives the best available assurance of the good faith of the applicant. If this cost be eliminated, every aimless adventurer who desires to "try his luck" would register for 27 cents from his home; and the registration of every such person would increase the total registration and decrease the probability that the bona fide home seeker would obtain land.

Mr. MANN. Will the gentleman yield for a question?

Mr. BURKE of South Dakota. Yes.

Mr. MANN. Does the gentleman think the present system is entirely satisfactory?

Mr. BURKE of South Dakota. I will say, Mr. Chairman, having come in personal contact with a number of these registrations, I have yet to see any person who has found any fault with the system. On the contrary, they have said that it is a fair way to dispose of this land.

[By unanimous consent, the time of Mr. Burke of South Dakota having expired, it was extended for ten minutes.]

Mr. MANN. Then I may say to the gentleman, so that he may be in possession of information on the subject, that I have no doubt that more than 100 people went from my district to each one of these Indian reservation openings, and I have no doubt that not more than 1 per cent received allotments, and I have further no doubt that the other 99 per cent were disappointed, and I know that some of them have considered it a confidence scheme, and have repeatedly said that it was a shame for the Government to ask

them to go out there and spend their money for railroad fare and living expenses for the purpose of being turned down in the end, when nothing was accomplished by it.

Mr. BURKE of South Dakota. Before this system was adopted they went and took their chance in a different way, and then it was a question of the strong over the weak, or, in the final analysis, the man who was willing to commit perjury.

Mr. MANN. I will agree with the gentleman that the present system is vastly superior to the old system of brute force and speed; but is that any reason why we might not try the experiment of opening these lands without requiring thousands of people to waste their time and their money going out onto the lands?

Mr. BURKE of South Dakota. But the gentleman certainly appreciates that this must be done in some orderly way; and does the gentleman believe that if you threw it open to registration to any person anywhere in the United States who might file for 25 cents that it could be managed in a way that you could control it?

Mr. MANN. I think we might try that experiment and find out. We know that the present system is unfair to the people who go out there and who get nothing by it. I know many people who have gone to several different openings in the vain expectation that they might obtain a homestead, and they have spent their money, squandered their time, and have come home with bitter feelings toward the Government that invited them to come and gave them nothing in return except a gambling chance, and not a fair gambler's chance even.

Mr. BURKE of South Dakota. Is not the gentleman aware that the Government has not asked them to come, and has never printed a line of advertising yet in connection with one of these openings?

Mr. SABATH. The gentleman is mistaken.

Mr. BURKE of South Dakota. I am not saying what railroads may do or what individuals may do.

Mr. MANN. I am aware of this fact that the Government, by the passage of this bill, does invite them to come, and permits the railroads to advertise and to lie in their advertisements, under permission directly of the Indian Office, to the people of the country. The gentleman knows that. He has seen these advertisements, as I have seen them.

Mr. BURKE of South Dakota. I have not seen any lying advertisements up in our country.

Mr. MANN. I have seen advertisements about the Rosebud Indian Reservation opening in the gentleman's own State, advertisements printed by the Milwaukee and St. Paul Railroad Company and the Chicago and Northwestern Railroad Company, with the statement that the information furnished came from the Indian Office, when I knew the statements were not true, wherever they came from, and there was no pretense on the part of the Government that it denied any such statement as that.

Mr. BURKE of South Dakota. The Government has always had regulations and information in printed form that it has sent to any person who might write and ask for it.

Mr. MANN. I understand.

Mr. BURKE of South Dakota. Let me say to the gentleman that it has required in a number of these openings, in order to get the conditions adjusted so that they could be operated orderly, the confining of it to a few places in the vicinity of the land. It was found that in order to have it safeguarded and to prevent persons from duplicating, to prevent persons from perhaps registering under fictitious names, that the notaries that

are authorized to administer oaths to these people are only permitted to operate after they have received the authority from the man in charge of the registration.

Mr. MANN. I understand.

Mr. BURKE of South Dakota. And they endeavor, as nearly as possible, to have registrations at the point where the local land office is located, in order that it may come under the supervision and direction of the local registrar and receiver. Now, if you have an opening such as this amendment proposes, does anybody think for a minute that there will not be somebody to do some advertising in connection with this proposition, and there may be misleading advertisements all over the country, from Maine to California and down to Florida, and there will be millions of these applications sent into the department without any way of authenticating them or determining them?

Mr. MANN. Why will so many people send in their applications?

Mr. BURKE of South Dakota. Why, because it appeals to them like a lottery.

Mr. MANN. Because it is such a good thing. If it is a good thing, let everybody have a fair chance at it.

Mr. BURKE of South Dakota. Does not the gentleman from Illinois believe that a man who has any honest intention of going upon what is equivalent to the public domain and acquiring a homestead ought to take sufficient interest in it to go out and look it over before registering?

Mr. MANN. Why, certainly not. Why should he, if he wanted to take a homestead out there, not know the land well enough in order to get a homestead? I have faith enough in the gentleman from South Dakota to know that he would not throw it open for homestead purposes unless people could live on it as homesteaders.

I think that is a fair presumption all over the United States. The people have that confidence in Congress.

Mr. BURKE of South Dakota. The trouble with the gentleman's amendment is that it is very nice in theory, but would be impracticable.

Mr. MANN. Let us try it once.

Mr. BURKE of South Dakota. The department has authority now to open these lands under rules and regulations. If the gentleman can improve on the present system, I would be glad if he would take it up.

Mr. SABATH. No doubt the number of applicants for registration will reach anywhere from 40,000 to 50,000, and it may possibly exceed the latter figure; therefore do you not believe that my amendment, which will effectuate a saving from \$100 to \$200 to each and every home seeker who will try to register for these lands, will prove beneficial?

Mr. BURKE of South Dakota. The gentleman is laboring under a misapprehension.

Mr. SABATH. No; I am not.

Mr. BURKE of South Dakota. He has an idea that there is a lottery in which something can be had for nothing. That is not the condition. The man must first have qualifications as a homesteader to begin with. He must go upon the land and live upon it as his bona fide residence. He must do that for fourteen months, and he must pay the price that has been fixed upon the land by the appraisers, as this bill provides.

Mr. SABATH. And the people in whose interests I have been speaking are willing to do it. They are willing to pay for the land and comply with all the laws, rules, and regulations, but they are not willing to risk \$150 or \$200 extra without knowing whether they will have a possible chance, chances being more than 100 to 1 against them.

Mr. HINSHAW. Will the gentleman allow me?

Mr. BURKE of South Dakota. I yield to the gentleman.

Mr. HINSHAW. How many of the 40,000 people you speak of who go there and register actually intend to be bona fide settlers upon the land?

Mr. SABATH. I am speaking of these 40,000 who traveled to the last opening. Every one went there with that intention, otherwise he would not have spent from \$100 to \$150 and lose time and endure hardships to go down there if he did not intend to become a bona fide settler.

Mr. HINSHAW. I do not believe that the fact that they went there and registered and paid 50 cents that it was ever their intention to become bona fide settlers.

Mr. SABATH. Is the gentleman of the impression that these people went there for a pleasure trip?

Mr. BURKE of South Dakota. In view of the registration we had, where there were several hundred in the last drawing that did not file, and when they came down to 1,000, a larger proportion, and so on, the further you went down the list, there was not more than 1 in 10.

Mr. HINSHAW. If there was a general registration open to the whole country 90 or 95 per cent would not be bona fide homesteaders.

[Here the hammer fell.]

Mr. BURKE of South Dakota. I ask unanimous consent to proceed for five minutes.

The CHAIRMAN. Is there objection?

Mr. HAYES. I call for the regular order, Mr. Chairman.

The CHAIRMAN. Objection is heard.

Mr. FERRIS. I move to strike out the last word.

The CHAIRMAN. That motion is not in order.

Mr. FERRIS. I desire to be recognized in opposition to the amendment.

Mr. HAYES. I raise the point of order that there has been all the debate that the rules allow.

The CHAIRMAN. The point of order is well taken; debate is exhausted.

Mr. FERRIS. I ask unanimous consent that I may address the committee for five minutes.

Mr. HAYES. I object.

Mr. FERRIS. I hope the gentleman will not object.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none. The gentleman from Oklahoma is recognized for five minutes.

Mr. FERRIS. Mr. Chairman, I desire to make a few observations on this amendment from a practical standpoint. I myself have gone through the details of an opening under this lottery or bidding plan. It is a very admirable plan of opening a new country, and it only needs the amendment of the gentleman from Illinois to make it absolutely perfect.

I again repeat, it only needs the amendment of the gentleman from Illinois [Mr. Sabath] to make it absolutely perfect. In the portion of Oklahoma where I now live there were 13,500 claims to be sold in this way, claims of 160 acres each. For those 13,500 claims there were applications approximating 280,000 people, including myself. Each of us had to pay railroad fare and be robbed by the crowded hotels and local notaries public, who sat there like a lot of vultures to take our money when we came to bid on the land, and all of us except 13,500 had to return without any land and without our money. It was wrong in principle and wrong in fact to force us all to go in person to register and undergo the hardships when the registration could as well be done at home.

The chairman of the Committee on Indian Affairs should not oppose this amendment, in deference to proper legislation. It is fair. It is just. It will give everyone a chance. It will relieve congestion, needless expense. It will give the poor people a chance as well as the speculators.

The scheme of opening lands by a drawing is an admirable one. The gentleman suggests that this will be a cumbersome proposition, from the fact that so many will be induced to apply. I want to state that it will not be cumbersome, and I can offer a reason for this conclusion. No matter how many apply, the first 13,500 whose names are drawn from the box, or out of a great wheel, as they used in my country, will have the right to make selections; the others of course get no land. They had a great hollow wheel in the Oklahoma opening, and they turned it around each time a name was drawn, and a boy who was blindfolded drew out one name, and that entitled the holder or name drawn out to go and select a piece of the land that was on sale. You do not register for a specific tract, but you register for a chance to go and select a specific tract. In other words, if my name is drawn out of the box first, I have an opportunity to go onto the reservation and select the best tract in the reservation or first choice. In other words, I would have the first chance of all the tracts that are offered for sale, and No. 2 has the second chance, and No. 3 the third chance, and so on. Now, the proposition that it will make it too cumbersome falls to the ground, because those people throughout the country who do not receive anything are not out anything. The first 13,500, if that be the number of claims to be sold, will get claims. What do they do? They get on the train and go out there and go before the land office and file on their claims. Then only the

man who gets land has spent any money, and only the man who gets land is out any money. Those who do not get any land are only out 25 or 50 cents for the fee paid to the notary or the clerk of the court of record before whom the acknowledgment is taken.

Mr. MADDEN. Will the gentleman yield for a question?

Mr. FERRIS. Certainly.

Mr. MADDEN. Suppose 200,000 people made application. Suppose that 150,000 of them did not appear at the drawing.

Mr. MANN. Nobody appears.

Mr. FERRIS. There would not any of them appear at the drawing.

Mr. MADDEN. Some would.

Mr. FERRIS. They would not need to.

Mr. MADDEN. Suppose the other 150,000 did appear. Suppose the first man whose name was drawn was one of the 150,000. Suppose a man whose name was drawn last was one of the 50,000 who did appear. What opportunity would the man whose name was first drawn, but who did not appear, have to make the first selection if he was not on the ground?

Mr. FERRIS. I am very glad the gentleman asked that question, because that enables me to clear up the situation. There is always a lapse of time, two or three months, before they can make an entry, and then there is notice sent out from the local land office which says, "On the first day of the filing we can take care of the first 125 applicants, numbers from 1 to 125," inclusive, fixing a positive date. So the man living in Maine who drew a number has ample time to get to Dakota to file, and the man living in California has ample time to get to Dakota and file on his land in the order in which their respective numbers entitle them.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FERRIS. I should live five minutes more.

Mr. MARTIN of South Dakota. I move to strike out the last word.

The CHAIRMAN. The Chair will state that the motion to strike out the last word is not in order, since it would be an amendment in the third degree.

Mr. FERRIS. I ask unanimous consent to proceed for five minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. MADDEN. Then, the man whose name is first drawn, under your plan of operation, is not required to go immediately after the drawing of his name to make a selection of his land?

Mr. FERRIS. That never has been the case, either in Dakota or Oklahoma. There can be no reason to assume that they would change that feature in this opening.

Now, one word more. It was suggested by the chairman of the committee that if we do not make the person appear and register his application, certain frauds will attend the opening.

That observation is not a correct one. Why? Because the applicants that came to the registration did not in former openings appear before any government officer or board, but merely appeared before a notary public, who was not always what he should be. They sat there with blanks written out, and charged whatever they could get from the unsuspecting home seekers; in some cases 25 cents and other \$1.25. They made enormous wages. Only a few had commissions, and they had a monopoly on the business.

Mr. BURKE of South Dakota. Mr. Chairman, the gentleman surely does not mean to leave the impression

with the House that such conditions prevail under the present practice?

Mr. FERRIS. Mr. Chairamn, I do not know that I have anything to recall. They sat there—forty or fifty of them—and hundreds of men appeared daily before them, and they were charged, as above specified, all kinds of prices. It was nothing more nor less than a hold-up scheme, and the home seekers ought not to have to submit to it.

Mr. BURKE of South Dakota. But no notary public is permitted now to charge more than 25 cents.

Mr. SABATH. The superintendent appoints the notaries, and did under the last proclamation.

Mr. BURKE of South Dakota. I will say to the gentleman that if the amendment of the gentleman from Illinois is to prevail, people all over this country will be defrauded.

Mr. FERRIS. Mr. Chairman, if the gentleman will permit me a word further, I think I can make it clear that that will not be the case. In the county where an applicant lives, the court of record knows him best, knows his qualifications best, and should make out the application for registration. Another thing is that in the county where the applicant lives every applicant can go to the clerk of the court and he can get identification that he is the one actually applying for this land; hence no chance for duplication of registration, no chance for dummies, no chance for fraud or error. The judge of the court or the clerk of the court of record is much more competent and a much more proper one to pass on these matters than a few men who sit around at one of these openings and get their notarial commissions—I do not know how. Many men in our Oklahoma openings got notarial commissions in some way who were not entitled to them, and under ordinary conditions could not get them.

The right way to do is to let each man apply where he is known, where he can get identification, and go before the clerk of the court or the judge of the court and have his application made out in the usual way. He can then go down and drop it into the post-office and mail it to the board that is conducting the opening, and he will then have it put into this Pandora's box, or large wheel, as it was in our case, and it will be placed in an envelope, and they will then have the drawing, and the man who is fortunate enough to get the land will have an opportunity to get on the train, go and examine the land, and later enter the land. In that case no wrong is done anyone, and the plan, which is an admirable one, will be perfected. The plan is good in every respect, and the gentleman's amendment ought to be adopted.

Mr. CARTER. Mr. Chairman, in order that the record may show just what was done in the gentleman's country, I ask that he state how many people registered and how many people drew land.

Mr. BURKE of South Dakota. And when the opening took place.

Mr. FERRIS. The opening took place in August—no, the registration was in June—and the filing began the 6th of August, 1901, nine years ago, and in response to my colleague, Mr. Carter, I will state that there were 13,500 claims entered, of 160 acres each, and there were applications approximating 280,000. It was no trouble to sort out the first 13,500 applications. They just turned a huge wheel and had a boy, who was blindfolded, pick out an envelope, and the first envelope was that of Mr. James R. Wood, of Oklahoma, and the next one was Mattie H. Beal, of Wichita, and so on down the line, and their claims are worth to-day \$75,000 apiece. There was no confusion at all about

the drawing or the filing. The only trouble about this plan of opening and sale of public lands is the cumbersome registration feature. The proposed amendment will perfect that. I so much hope it may be adopted. I hope the chairman will not oppose it himself.

Mr. MARTIN of South Dakota. Mr. Chairman, I desire to be recognized in opposition to the amendment.

The CHAIRMAN. The Chair will state that debate is exhausted upon the amendment.

Mr. MARTIN of South Dakota. I ask unanimous consent that I may be permitted to proceed for five minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. MARTIN of South Dakota. Mr. Chairman, I believe that this amendment ought not to pass. The conditions that the gentleman from Oklahoma [Mr. Ferris] has been describing was in 1901, nine years ago.

Mr. SABATH. Will the gentleman pardon me?

Mr. MARTIN of South Dakota. Certainly.

Mr. SABATH. Those conditions prevailed last year.

Mr. MARTIN of South Dakota. Not at all; not such as described by the gentleman.

Mr. SABATH. Not the same conditions, but like conditions.

Mr. MARTIN of South Dakota. In no way similar. I may say that the experience in Oklahoma placed upon the land department the important task of providing the simplest possible way to accomplish these openings, and the system there described has been very vastly improved upon. Every notary is under the strictest regulation and supervision. This bill does not prescribe the manner in which these openings shall take place. It

leaves the whole subject to the Commissioner of the General Land Office, and he may arrive at the very best possible way to accomplish what is sought to be accomplished, to wit, not to permit the operation of speculators, but to get actual home seekers in a way that will be the simplest and the best way for them to acquire an opportunity to get one of these homesteads.

Mr. STAFFORD. Will the gentleman permit?

Mr. MARTIN of South Dakota. Certainly.

Mr. STAFFORD. Does not the existing system give a preference to the persons living in the immediate vicinity or in the State where the reservation is opened?

Mr. MARTIN of South Dakota. No preference is given to anyone. All persons who go to registration points are treated exactly alike. The Commissioner of the General Land Office will no doubt make the best possible system he can, but the plan heretofore followed requires people to register at certain points, and he may make as many of those points in the United States as he sees fit. There is no limitation in this bill as to where those points may be.

What I desire to say in opposition to the gentleman's amendment is this: The purpose of his amendment, although I doubt very much whether the language would accomplish it—

Mr. SABATH. I think it will.

Mr. MARTIN of South Dakota. But the purpose of this amendment is to open to everybody, without any specification or qualification of citizenship, or anything else—

Mr. SABATH. Oh, no.

Mr. MARTIN of South Dakota. I so read it. The difficulty with this is that it is precisely in the wrong direction.

Mr. SABATH. No; it is in the right direction.

Mr. MARTIN of South Dakota. Let us see. The difficulty with the gentleman's proposition is that it is in the wrong direction. The trouble with the present system is that it brings too many people into the drawing. If there is any way you can limit the drawing simply to the people who are actually seeking homes that ought to be adopted. The one here proposed opens it to everybody, to speculators, who have no view of doing anything else than simply making a registration to speculate upon, which they can do by spending 25 cents for an affidavit, whereas now we have, perhaps, thousands who take sufficient interest and have sufficient serious intention of taking a home to go out and register, we open it to millions, so that the opportunity of the real home builder of really getting a chance to have a home is thereby curtailed that much more. There are too many men who file now who have no serious intention of taking a homestead. You remove all barriers and there will be hundreds of thousands simply standing in the way of the honest home builder who is seeking to acquire an opportunity to make a home upon some of these lands.

We ought to leave this subject right where the bill leaves it, to the discretion and broad experience of this department, better able to know what is the best way to bring the homebuilder to these lands, and not limit it in any way. This amendment, if it should be adopted, will remove that discretion from the department; would remove the opportunity for taking the benefit of the information and experience we have had in the past, and make it absolutely necessary that any man anywhere in the United States who cares to go before an officer and file a chance shall be thrown into this lottery, so-called, and in that way lessen, by everyone

who does this simply for the purpose of speculation, the chances of the real worthy man to obtain the land.

The CHAIRMAN. The gentleman's time has expired.

Mr. MADDEN. Mr. Chairman, I ask unanimous consent that I may be permitted to speak for five minutes on this subject.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent that he may speak for five minutes. Is there objection?

Mr. HAYES. Mr. Chairman, I do not want to be unnecessarily severe, but it seems to me we have had plenty of discussion on this question, and I object.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Illinois.

Mr. SABATH. I desire to perfect the amendment by adding these few lines.

The CHAIRMAN. The gentleman from Illinois [Mr. Sabath] asks unanimous consent that this amendment may be modified as indicated by the changes made by him. The Clerk will report the modified amendment.

Mr. MONDELL. Mr. Chairman, I move to amend the amendment of the gentleman from Illinois by striking out the last word.

The CHAIRMAN. That motion is not in order. The Clerk will report the modified amendment.

The Clerk read as follows:

Modify the amendment so as to read:

Insert after "prescribed," page 12, line 7:

"That all applications for registration must show the applicant's name, post-office address, age, height, and weight, and be sworn to by him before any judge or clerk of a court of record of the county where such applicant resides, and."

The CHAIRMAN. The gentleman from Illinois [Mr. Sabath] asks unanimous consent that his amendment may be modified to this extent.

Mr. MARTIN of South Dakota. Mr. Chairman, reserving the right to object, I would like to have a reading of the proposition again.

Mr. MURPHY. Mr. Chairman, I want to offer an amendment to the amendment.

The CHAIRMAN. Without objection, the Clerk will again report the modified amendment offered by the gentleman from Illinois [Mr. Sabath].

The amendment was again read.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. MURPHY. I desire to offer an amendment.

The CHAIRMAN. An amendment to this amendment will not be in order. This amendment is an amendment to an amendment.

Mr. MANN. Mr. Chairman, I would like to suggest to the Chair that when this bill was read, when we went into Committee of the Whole, the gentleman from South Dakota asked unanimous consent that the amendment of the committee should be read in lieu of the original bill, section by section, as an original proposition, so that amendments might be offered to the amendment. That was agreed to by unanimous consent.

The CHAIRMAN. The Chair did not so understand, but the Chair may be in error. The Chair understood that it simply provided that it should be read by sections instead of as a single proposition, as would be the rule in reporting a substitute.

Mr. MONDELL. But, Mr. Chairman, the request was also made, as stated by the gentleman from Illinois,

that the substitute bill should be considered as an original bill.

Mr. MANN. As an original bill I interjected that statement, and that was the consent given.

Mr. MADDEN. A parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. MADDEN. I wish to know if this amendment to the amendment of the gentleman from Illinois is pending.

The CHAIRMAN. No amendment is pending.

Mr. MADDEN. The gentleman just offered an amendment.

The CHAIRMAN. The gentleman from Illinois has simply asked unanimous consent to modify his amendment.

Mr. MADDEN. I object, Mr. Chairman, unless the amendment is open for debate.

The CHAIRMAN. In view of the explanation made by the chairman of the committee as to the unanimous consent, the Chair will hold that the amendment offered by the gentleman from Illinois is in order.

Mr. MURPHY. I want to offer an amendment, provided this amendment shall apply to a man and his children.

Mr. SABATH. That is in another section.

Mr. MURPHY. I withdraw the amendment.

Mr. MONDELL. Mr. Chairman, I now renew my motion to strike out the last word of the amendment offered by the gentleman from Illinois.

Mr. Chairman, the amendment offered by the gentleman from Illinois is well intended. His desire is a very proper and praiseworthy desire to allow a larger number of people who are seeking homes to participate in the drawing and to have an opportunity to procure a homestead. The difficulty is that the practical workings

of the plan will be exceedingly disappointing. The result of it will be, as suggested by the gentleman from South Dakota [Mr. Martin], largely to increase the number of speculative applicants. There are altogether too many under the drawings as at present conducted. There are altogether too many, as we all know, who make applications and who register without a clear idea of obtaining a home. Under the present plan, the plan heretofore followed, and which is provided in the bill, a man must at least have enough interest in the matter to travel to those lands and look them over and to have some sort of a notion as to whether if he is successful in the drawings he shall desire to make a filing.

But if you give every man and every woman throughout the land, and without regard to the question as to whether they are qualified entrymen or not, because that can not be determined under the circumstances, the right to register, you may have a million registrations. The result would be that one, perhaps, out of a hundred of those who register really desire a home. The majority of those who would register would do so in the hope that they would draw one of the first numbers and thereby get an opportunity to relinquish their claims for a consideration. So a large proportion of the first thousand or two thousand or five thousand who were drawn would have no real interest in obtaining a home, and therefore many would fail to make their filing.

The result will be that while there will be a great many more registrations than under the present plan, there will be a much smaller number of actual entries when the time comes to enter. I am in hearty accord with the idea of giving those who in good faith desire to enter these lands, pay the appraised price, and comply with the provisions of the homestead law, an

opportunity to do so, but a plan the effect of which is to make this a nation-wide lottery, with a chance for everybody who is willing to pay a quarter or half a dollar in the way of a fee to a notary to participate in this drawing for preferences in entry, instead of securing a larger number of real bona fide farmer entrymen for the lands, will simply increase vastly the number of those who register with no other thought than the hope of drawing a prize. It will discourage rather than encourage the real intending settler.

Mr. MADDEN. I move to strike out the last two words.

The CHAIRMAN. There is an amendment pending to strike out the last word.

Mr. MADDEN. I rise to oppose that amendment.

The CHAIRMAN. The Chair will recognize the gentleman.

Mr. MADDEN. Mr. Chairman, I think that every citizen of the United States should have an opportunity of securing a home if he wants it, and therefore I think every citizen of the United States who wishes to register for the drawings provided, when lands of the character indicated in this bill are to be opened, should have that chance. It does not matter whether we have 100 registries or 1,000,000. The more the better. It is not fair to say that men who take the trouble to register have no intention of assuming the responsibility of the entry. It is not fair to assume that because a man does not want to expend the money to go on a wild-goose chase, he does not want a farm. It is not fair to say that a man who wants to register in New York or Boston or Chicago would not make as good a farmer as the man who lives in Dakota and wants to register. It is not fair to say that men will register for the speculative value that will come by reason of selections

they may have an opportunity to make. It is not fair to say that if an allotment is made to a man who registers, he will sell the thing allotted to him as a matter of speculation.

A very large percentage of our American citizenship would like to have a fair opportunity of getting a farm at a reasonable price. The number who do not care to go to the expense of traveling to the point where selections of land are to be made, without any knowledge of whether they are to get a farm or not, is enormous; but the fact remains that this plan suggested by my colleague [Mr. Sabath] is not only orderly in its methods of procedure, but it is the most orderly method that could be adopted. To say that because a larger number will register you do not get as good a class of citizens who want to settle on the lands is an absurdity, and the opinions of the gentleman from Wyoming and the gentleman from Dakota as to the class of citizens who will register are of no more importance than an opinion that may be given by somebody who does not live near Dakota or Wyoming.

Mr. MONDELL. Will the gentleman yield to me?

Mr. MADDEN. I have no time to yield.

Mr. MONDELL. The gentleman does not want to misstate my position.

Mr. MADDEN. The gentleman stated that the class of citizenship who made application for the opportunity of getting the land, and who were not willing to go on the land to see it and indicate their desire to occupy the land, would not be as good as that of those who were willing to go to the ground.

Mr. MONDELL. I did not say that, Mr. Chairman. I said there would be more speculative applicants.

Mr. MADDEN. The gentleman only expressed that as an opinion, and an opinion without knowledge is not worth much. [Laughter.]

The CHAIRMAN. If there is no objection, the pro forma amendment will be considered as withdrawn. The question is on agreeing to the amendment offered by the gentleman from Illinois [Mr. Sabath].

The question was taken, the Chair announced that the ayes appeared to have it.

Mr. BURKE of South Dakota. I demand tellers.

Tellers were refused, 17 Members, not a sufficient number, rising in support of the demand.

Accordingly the amendment was agreed to.

The Clerk began the reading of section 3.

Mr. MURPHY (interrupting the reading). Mr. Chairman, I want to offer an amendment.

The CHAIRMAN. The Chair will ask the gentleman to please wait until the Clerk has finished the reading of the section.

Mr. MURPHY. I want to offer the amendment to section 2.

The CHAIRMAN. The Chair thinks the gentleman is too late to offer an amendment to section 2. Was the gentleman on his feet seeking recognition before the Clerk began the reading of section 3?

Mr. MURPHY. Yes; I was trying to get recognition.

The CHAIRMAN. The Chair will recognize the gentleman to offer his amendment.

Mr. MURPHY. Mr. Chairman, I offer the following amendment, which I send to the Clerk's desk and ask to have read.

The Clerk read as follows:

Insert at the end of section 2 the following:

"*Provided*, That the applicants for registering shall be a married man or woman with one child or more."

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was rejected.

The CHAIRMAN. The Clerk will conclude the reading of section 3.

The Clerk read as follows:

Sec. 3. That before any of the land is disposed of, as hereinafter provided, and before the State of South Dakota shall be permitted to select or locate any lands to which it may be entitled by reason of the loss of sections 16 or 36, or any portions thereof, by reason of allotments thereof to any Indian or Indians, the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe; and he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than 10 acres in any town site, and patents shall be issued for the lands so set apart and reserved for school, park, and other purposes to the municipality legally charged with the care and custody of lands donated for such purposes. The purchase price of all town lots sold in town sites, as hereinafter provided, shall be paid at such time and in such installments as the Secretary of the Interior may direct, and he shall cause not more than 20 per cent of the net proceeds arising from such sale to be set apart and expended under his direction in the construction of schoolhouses or other public buildings or in improvements in the town sites in which such lots are located. The net proceeds derived from the sale of such lots and lands within the town sites as aforesaid shall be credited to the Indians, as hereinafter provided.

Mr. BURKE of South Dakota. Mr. Chairman, I offer the following amendment to section 3, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 13, line 10, after the word "other," insert the word "public," so as to read "other public purposes."

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken and the amendment was agreed to.

Mr. BURKE of South Dakota. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 13, line 21, after the word "aforesaid," insert "less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements."

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Sec. 4. That the price of said lands entered as homesteads under the provisions of this act shall be fixed by appraisements, as herein provided. The President of the United States shall appoint a commission to consist of three persons to classify, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections 16 and 36 in each of said townships, said commission

to be constituted as follows: One resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians. That within twenty days after their appointment the said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect, classify, and appraise, in 160-acre tracts each, all of the remaining unallotted lands embraced within that portion of the reservation described in section 1 of this act. In making such classification and appraisal said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral land shall not be appraised. That said commissioners shall be paid a salary of not to exceed \$10 per day each while actually employed in the inspection and classification of said lands, and necessary expenses to be approved by the Secretary of the Interior, such inspection and classification to be completed within six months from the date of organization of said commission.

Mr. BURKE of South Dakota. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 14, line 5, after the word "thirty-six," insert "or other lands which may be selected in lieu thereof by the State of South Dakota."

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. BURKE of South Dakota. Mr. Chairman, that simply is an amendment that is necessary to conform to what the committee has reported to the House.

Mr. STAFFORD. Will the gentleman permit a question there? I assume that the State of South Dakota has selected other sections besides sections 16 and 36 for school-section lands when they were included within the reservations?

Mr. BURKE of South Dakota. It has not.

Mr. PARSONS. Might not that amendment, perhaps, authorize the State of South Dakota to select these lieu lands in other public lands than these Indian reservations?

Mr. BURKE of South Dakota. Not at all. This is simply qualifying, so that it will read:

Excepting sections 16 and 36, or other lands which may be selected in lieu thereof by the State of South Dakota.

The law authorizes that if sections 16 or 36 have to be taken by an Indian then the State may take other lands in the same township of equal value.

Mr. PARSONS. This law does?

Mr. BURKE of South Dakota. Yes; and all the bills that have been passed relating to Indian reservations. This amendment simply makes the bill read as the committee reported it.

Mr. STAFFORD. As I understand it, there have been no allotments to Indians of any of the school lands, so far as South Dakota is concerned.

Mr. BURKE of South Dakota. There have been, of section 16 or section 36, and in those cases we permit to take land in lieu thereof in the same township in which they lose section 16 or section 36; and if it can not be gotten in that township, in the adjoining township.

Mr. PARSONS. But it all has to come out of the Indian lands?

Mr. BURKE of South Dakota. It all has to come out of the Indian lands.

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was agreed to.

Mr. BURKE of South Dakota. Now, Mr. Chairman, on the same page, line 21, after the word "mineral," insert "and timber."

The CHAIRMAN. The gentleman from South Dakota offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 14, line 21, after the word "mineral," insert "and timber."

Mr. BURKE of South Dakota. That is another amendment with the same purpose.

Mr. STAFFORD. Will the gentleman explain why he recommends an exception in appraisal of mineral and timber lands?

Mr. BURKE of South Dakota. Because they are not to be disposed of. We are reserving them. Consequently we provide that they shall not be appraised.

Mr. BUTLER. May I ask the gentleman a question?

Mr. BURKE of South Dakota. Yes.

Mr. BUTLER. From the phraseology of the bill you reported I understand that mineral lands, if any, shall not be appraised. Now, you propose to add the words "and timber lands." You will find in the latter part of the sentence the words "but the mineral lands shall not be appraised." Do you propose to appraise the mineral lands?

Mr. BURKE of South Dakota. That is what I am asking. That is now pending.

Mr. MONDELL. What is the gentleman's purpose in not disposing of the timber lands?

Mr. BURKE of South Dakota. We are providing in this bill and in the other bill that is exactly in the same form for reserving the timber land for the use of the Indians as a forest. As a matter of fact, on this particular reservation there is not a single stick of timber, but the department seems to think the timber ought to be conserved, and so we put this language in the bill.

Mr. MONDELL. You are conserving some timber that does not exist.

Mr. BURKE of South Dakota. So far as this reservation is concerned, that is true, but we are establishing a precedent that might be good to follow in other reservations where there may be timber.

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. BUTLER. Let us have the amendment again reported to the House.

The CHAIRMAN. Without objection, the Clerk will again report the amendment.

The amendment was again read.

The CHAIRMAN. The question is on agreement to the amendment.

The question was taken, and the amendment was agreed to.

Mr. BURKE of South Dakota. Now, Mr. Chairman, in the same line, after the word "appraise," insert:

That timber may be classified without regard to acreage: *And provided further*, That any lands classified as timber lands shall not be disposed of, but shall be reserved for the use of the Rosebud Indians.

The CHAIRMAN. The gentleman from South Dakota offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 14, line 12, after the word "appraise," insert:

"*Provided*, That timber land may be classified without regard to acreage: *And provided further*, That any land classified as timber land shall not be disposed of, but shall be reserved for the use of the Rosebud Indians."

Mr. STAFFORD. Will the gentleman kindly explain that proviso?

Mr. BURKE of South Dakota. This proviso is intended to reserve these lands for the use of the Indians, and that is the purpose of the amendment.

Mr. STAFFORD. Why should not that be the purpose, so far as the mineral lands are concerned?

Mr. BURKE of South Dakota. We do not attempt to reserve the mineral lands for the use of the Indians, because they would not be of any good. We anticipate that the timber would be of some benefit to them.

Mr. PARSONS. What do you do with the mineral lands?

Mr. BURKE of South Dakota. We do not make any disposition of them. There is no mineral land, as a matter of fact, within these tracts.

Mr. STAFFORD. The mineral lands are in the same category, but neither of them exists.

Mr. BURKE of South Dakota. In this particular reservation they do not exist.

Mr. PARSONS. What happens to mineral lands, if there are any?

Mr. BURKE of South Dakota. They are reserved, to be disposed of as Congress may provide at some future time. There is a bill now pending providing for the leasing of lands valuable for mineral upon Indian

reservations. There is no law, as I understand, that authorizes the mining of such lands.

Mr. BUTLER. How many acres of land are there in this reservation?

Mr. BURKE of South Dakota. Seven or eight hundred thousand acres.

Mr. BUTLER. How many acres are supposed to be known as timber lands?

Mr. BURKE of South Dakota. There is, as a matter of fact, no timber land in this reservation. We doubt if there will be found any lands that will be regarded as timber lands. But it was put in as a mere matter of precaution.

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was agreed to.

Mr. BURKE of South Dakota. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The gentleman from South Dakota offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 14, line 24, after the word "expenses," insert "exclusive of subsistence."

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Sec. 6. That the price of said lands disposed of under the homestead laws shall be paid in accordance with the rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to

be paid in cash at the time of entry and the balance in five equal annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the appraised price thereof: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section 2301, Revised Statutes, by paying for the land entered the appraised price, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of land is \$1.25 per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this act: *And it is further provided*, That any lands remaining unsold after said lands have been open to entry for seven years may be sold to the highest bidder for cash without regard to the prescribed price thereof fixed under the provisions of this act, under such rules and regulations as the Secretary

of the Interior may prescribe, and patents shall be issued therefor.

Mr. BURKE of South Dakota. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 15, line 13, after the words "paid in," strike out the word "one" and insert the word "two." On page 15, line 14, strike out the words "two, three, four, and five" and insert the words "three, four, five, and six."

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was agreed to.

Mr. BURKE of South Dakota. Mr. Chairman, I now offer an amendment, in line 19, page 15, after the words "shall be," strike out the words "reoffered for sale and" and insert the words "again subject to." That is a committee amendment.

The Clerk read as follows:

Page 15, line 19, after the words "shall be," strike out the words "reoffered for sale and" and insert in lieu thereof "again subject to."

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. STAFFORD. Mr. Chairman, I would like the gentleman to explain the purpose of the amendment which is pending.

Mr. BURKE of South Dakota. Simply that the language is better than the words "reoffered for sale." These lands are disposed of under the provisions of the homestead law, which simply provides that if a tract is forfeited by an entryman who has previously entered and failed to comply with the requirements of the law,

the land shall be again subject to entry under the provisions of the homestead law.

Mr. MANN. That is all right.

Mr. BURKE of South Dakota. Instead of "reoffered for sale." That is not the usual language.

Mr. STAFFORD. The language does not change the intendment of the law?

Mr. BURKE of South Dakota. Not at all. This is a committee amendment.

The question was taken, and the amendment was agreed to.

Mr. MANN. Mr. Chairman, I move to strike out, on page 16, the lines 13, 14, 15, 16, 17, and 18.

The CHAIRMAN. The gentleman from Illinois offers an amendment, which the Clerk will read.

The Clerk read as follows:

Page 16, strike out lines 13 to 18, inclusive.

Mr. BURKE of South Dakota. Mr. Chairman, I ask unanimous consent that the amendment may be considered as agreed to. I do not object to it at all.

The question was taken, and the amendment was agreed to.

Mr. MANN. And insert a period after the word "act," in line 12, instead of the colon.

The Clerk read as follows:

Sec. 8. That sections 16 and 36 of the land in each township within the tract described in section 1 of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at \$2.50 per acre, and the same are hereby granted to the State of South Dakota for such purpose, and in case any of said sections, or parts thereof, are lost to said State by reason of allotments thereof to

any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section 1 of this act, to locate other lands not otherwise appropriated, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement: *Provided*, That in any event not more than two sections shall be granted to the State in any one township, and lands must be selected in lieu of sections 16 or 36, or any part thereof, within the township in which the loss occurs, except in any township where there may not be two sections of unallotted lands, in which event whatever is required to make two sections may be selected in any adjoining township.

Mr. BURKE of South Dakota. Mr. Chairman, on page 17, line 22, after "thirty-six" insert "or both."

The Clerk read as follows:

Page 17, line 22, after the word "thirty-six," insert "or both."

The question was taken, and the amendment was agreed to.

Mr. STAFFORD. Mr. Chairman, I move to strike out the last word. I would like to ask the gentleman, the chairman of the committee, as to whether South Dakota at present has a right to select sections 16 and 36 in each township for school purposes, including those in Indian reservations?

Mr. BURKE of South Dakota. I will say to the gentleman that the enabling act absolutely granted to the State sections 16 and 36. In Indian reservations it provided that the grant did not become applicable until the Indian title became extinguished.

Mr. STAFFORD. There was a right given to the State to choose other land in lieu of these sections if they were included within Indian reservations.

Mr. BURKE of South Dakota. That has always been the rule where the State lost section 16 or 36. They have always been permitted to take lieu lands in order to make up for the loss.

Mr. STAFFORD. Has South Dakota in any instance selected lands without the reservation in lieu of those school sections which lie in the reservation?

Mr. BURKE of South Dakota. It has not.

Mr. STAFFORD. Otherwise you would be conferring a double privilege upon the State of South Dakota by the language of this section.

The CHAIRMAN. Without objection, the pro forma amendment will be considered as withdrawn.

The Clerk read as follows:

Sec. 9. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of not more than \$125,000, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section 7 of this act. And there is hereby appropriated the further sum of \$25,000, or so much thereof as may be necessary, for the purpose of making the appraisement and classification provided for herein: *Provided*, That the latter appropriation or any further appropriation hereafter made for the purpose of carrying out the provisions of this act shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribe.

Mr. BURKE of South Dakota. Mr. Chairman, I have a committee assignment. On page 18, line 6, strike out "twenty-five" and insert "thirty-five."

The CHAIRMAN. The gentleman from South Dakota offers an amendment with the Clerk will report.

The Clerk read as follows:

Page 18, line 6, strike out "twenty-five" and insert "thirty-five," so that it will read "\$35,000."

Mr. BUTLER. What is the reason for offering that amendment?

Mr. BURKE of South Dakota. The amount stated in the bill is found on computation not to be sufficient.

The question being taken, the amendment was agreed to.

Mr. BYRNS. I wish to ask the gentleman from South Dakota if the word "seven," in line 9, should not be "eight?" Should not that be section 8 instead of section 7? I think the "seven" is a typographical error.

Mr. BURKE of South Dakota. That should be section 8. On page 18, line 9, I move to strike out "seven" and insert "eight."

The CHAIRMAN. The gentleman from South Dakota offers an amendment, which the Clerk will report.

The Clerk read as follows:

On page 18, in line 9, strike out "seven" and insert "eight."

The amendment was agreed to.

The Clerk read as follows:

Sec. 10. That every persons who shall sell or give away any intoxicating liquors upon any of the lands allotted or to be allotted, reserved, or disposed of within the tract described in section 1 of this act, upon conviction thereof shall be punishable by imprisonment for not more than

two years or by a fine of not more than \$500, or by both such fine and imprisonment.

Mr. BURKE of South Dakota. Mr. Chairman, I offer as a substitute for section 10 the amendment which I send to the Clerk's desk.

The Clerk read as follows:

Page 18, strike out section 10 and insert as section 10 the following:

"Sec. 10. That the lands allotted, those retained or reserved, and the surplus lands sold or otherwise disposed of shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country."

The CHAIRMAN. Does the gentleman from South Dakota desire to be recognized in support of this amendment?

Mr. BURKE of South Dakota. This subject was debated at great length in the general debate, and I stated at that time that I would offer this provision which has just been read from the Clerk's desk. This is the language that has been incorporated in a number of bills that have been passed in the present Congress.

I may say, furthermore, that we have adopted this provision because it has substantially been sustained by a decision of the Supreme Court of the United States in *Dick v. United States* (208 U.S., 340, 354).

Mr. BUTLER. I will ask the gentleman what is the penalty imposed by the present statute?

Mr. BURKE of South Dakota. I am not certain, but my opinion is that it is much more severe than what is provided here. I am not certain as to that, but I know the penalties are very severe.

Mr. SABATH. Will it be in order to offer a substitute for the amendment?

The CHAIRMAN. It will be in order to offer an amendment to the substitute.

Mr. SABATH. I desire to amend, in line 16, by striking out the word "introduction" and to substitute for it the word "sale," and in line 17 to strike out the words "into the" and insert "to any."

Mr. FERRIS. I think the gentleman is looking at the wrong paragraph.

The CHAIRMAN. That is not the paragraph that is under consideration.

Mr. GOEBEL. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. GOEBEL. The gentleman from South Dakota offers an amendment. Now, I understand that that is to be considered as the original proposition contained in the bill.

The CHAIRMAN. No; it is an amendment to it.

Mr. GOEBEL. What I want to know is whether I can move to strike out that amendment.

Mr. MANN. The gentleman can vote against it; that is all.

Mr. BURKE of South Dakota. In view of the fact that the amendment which I propose is one to perfect the measure, and is the one which was agreed to by the committee instead of the section which appears in the bill, I ask unanimous consent that the bill be so amended, and then let it be subject to amendment as an original proposition.

The CHAIRMAN. The gentleman from South Dakota asks unanimous consent that the amendment which he sends to the Clerk's desk be submitted for section 10 and treated as a part of the bill. Is there objection?

Mr. MANN. Reserving the right to object, if it is present in the form of a substitute in that way, of course it will have been agreed to by the committee, and can not then either be changed or stricken out. If the proposition is that this shall be considered as having been in the bill as reported—

Mr. BURKE of South Dakota. That is the proposition.

Mr. FITZGERALD. Mr. Chairman, I object to that.

The CHAIRMAN. Objection is heard. The gentleman from Illinois [Mr. Sabath] moves to amend the amendment offered by the gentleman from South Dakota as the Clerk will report.

The Clerk read as follows:

Amend the amendment so as to read:

"That the lands allotted, those retained or reserved, and the surplus lands sold or otherwise disposed of shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the sale of intoxicants to any Indian."

The CHAIRMAN. The question is on agreeing to the amendment to the substitute offered by the gentleman from Illinois.

Mr. BURKE of South Dakota. Mr. Chairman, I hope the amendment of the gentleman will not prevail.

Mr. SABATH. Mr. Chairman, it appears to me that some of the gentlemen do not understand my proposed amendment. I merely change the word "introduction," in line 16, and substitute the word "sale;" and change the words "into the," in line 17, and substitute therefor the words "to any;" and strike out the word "country," so that the provision reads now:

That the lands allotted, those retained or reserved, and the surplus lands sold or otherwise

disposed of shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the sale of intoxicants to any Indian.

Mr. MANN. Mr. Chairman, I suppose the gentleman knows that that would mean nothing.

Mr. SABATH. Why not?

Mr. MANN. Because we have a law on the statute books against the introduction of liquor into any Indian country. It has been on the statute books since long before the gentleman and I came on earth.

Mr. SABATH. This would prevent the sale of liquor to any Indian.

Mr. CAMPBELL. That is against the law now.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Illinois.

The question was taken, and the amendment was rejected.

The CHAIRMAN. The question now recurs on the amendment offered by the gentleman from South Dakota.

Mr. GOEBEL. Is this to be voted upon now—the provision as offered by the gentleman from South Dakota?

The CHAIRMAN. Yes. The question is on agreeing to the amendment offered by the gentleman from South Dakota.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Sec. 11. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections 16 and 36, or the equivalent, in each township; or to dispose of said land except as

provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: *Provided*, That nothing in this act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act.

The CHAIRMAN. The question now is on agreeing to the committee amendment as amended.

The question was taken, and the committee amendment as amended was agreed to.

Mr. BURKE of South Dakota. Mr. Chairman, I move that the committee do now rise and report the bill to the House with a recommendation that as amended it do pass.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. Currier, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill S. 183, and had directed him to report the same back to the House with amendments, with a recommendation that the amendments be agreed to and that the bill as amended do pass.

Mr. BURKE of South Dakota. Mr. Speaker, I move the previous question on the bill and amendments to final passage.

The previous question was ordered.

The SPEAKER. The question is on agreeing to the amendments.

The question was taken, and the amendments were agreed to.

The bill as amended was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washa-baugh counties in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect."

[45 Cong. Rec. 5483 (1910)]

Mr. JOHNSTON. This only gives these cadets the privileges of the act.

Mr. GALLINGER. If it simply gives them the privileges of the act, I have no objection to it.

The joint resolution was reported to the Senate as amended, and the amendment was concurred in.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

* * *

ROSEBUD INDIAN RESERVATION LANDS.

The VICE-PRESIDENT laid before the Senate the amendments of the House of Representatives to the bill (S. 183) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. GABLE. I move that the Senate disagree to the amendments of the House and request a conference on the disagreeing votes of the two Houses thereon, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the Vice-President appointed Mr. Gamble, Mr. Clapp, and Mr. Purcell the conferees on the part of the Senate.

[45 Cong. Rec. 5538 (1910)]

THE ROSEBUD INDIAN RESERVATION.

The SPEAKER laid before the House the bill S. 183, to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, with sundry House amendments disagreed to.

Mr. BURKE of South Dakota. Mr. Speaker, I move that the House insist on its amendments and agree to the conference asked by the Senate.

The motion was agreed to.

The SPEAKER announced the following conferees: Mr. Burke of South Dakota, Mr. Campbell, and Mr. Stephens of Texas.

[45 Cong. Rec. 6324-6326 (1910)]

ROSEBUD INDIAN RESERVATION, S. DAK.

Mr. GAMBLE submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 183) authorizing the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows: In lieu of the matter inserted by said amendment insert the following:

"That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh, south of the White River, and being described and bounded as follows: Beginning at a point on the third guide meridian west where the township line between townships thirty-nine and forty intersects the same, thence north along said guide meridian to the middle of the channel of White River, thence west along the middle of the main channel of White River to the point of intersection with the line dividing the Rosebud and the Pine Ridge Indian reservations, thence south along the boundary line between said reservations to the township line separating townships thirty-nine

and forty, thence east along said township line to the place of beginning, except such portions thereof as have been or may be hereafter allotted to Indians or otherwise reserved, and except lands classified as timber lands: *Provided*, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation: *And provided further*, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: *And provided further*, That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other authority, of any religious organization heretofore engaged in mission or school work on said reservation for such lands thereon (not included in any town site hereinafter provided for) as have heretofore been set apart to such organization for mission or school purposes.

"Sec. 2. That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: *Provided*, That prior to said proclamation the allotments within the portion of the said Rosebud Reservation to be disposed of as prescribed herein shall

have been completed: *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes as amended by the act of March first, nineteen hundred and one, shall not be abridged.

"Sec. 3. That before any of the land is disposed of, as hereinafter provided, and before the State of South Dakota shall be permitted to select or locate any lands to which it may be entitled by reason of the loss of sections sixteen or thirty-six, or any portions thereof, by reason of allotments thereof to any Indian or Indians, the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe; and he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than ten acres in any town site, and patents shall be issued for the lands so set apart and reserved for school, park, and other public purposes to the municipality legally charged with the care and custody of lands donated for such purposes. The purchase price of all town lots sold in town sites, as hereinafter provided, shall be paid at such time and in such installments as the Secretary of the Interior may direct, and he shall cause not more than twenty per centum of the net proceeds arising from such sales to be set apart and expended under his direction in the construction of schoolhouses or other public buildings or in improvements within the town sites in which such lots are located. The net proceeds derived from the sale of such lots and lands within the town sites as afore-

said, less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements, shall be credited to the Indians, as hereinafter provided.

"Sec. 4. That the price of said lands entered as homesteads under the provisions of this act shall be fixed by appraisement, as herein provided. The President shall appoint a commission to consist of three persons to classify, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections sixteen and thirty-six or other lands which may be selected in lieu thereof by the State of South Dakota, in each of said townships, said commission to be constituted as follows: One resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians. That within twenty days after their appointment the said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect, classify, and appraise, in one hundred and sixty acre tracts each, all of the remaining unallotted lands embraced within that portion of the reservation described in section one of this act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral and timber lands shall not be appraised: *Provided*, That timber lands may be classified without regard to acreage: *And provided further*, That all lands classified as timber lands shall be reserved for the use of the Rosebud

Indians. That said commissioners shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection, classification, and appraisement of said lands, and necessary expenses, exclusive of subsistence, to be approved by the Secretary of the Interior, such inspection, classification, and appraisement to be completed within six months from the date of organization of said commission.

"Sec. 5. That said commission shall be governed by regulations prescribed by the Secretary of the Interior; and after the completion of the classification and appraisement of all of said lands the same shall be subject to the approval of the Secretary of the Interior.

"Sec. 6. That the price of said lands disposed of under the homestead laws shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments, to be paid in two, three, four, five, and six years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be again subject to entry under the provisions of the homestead law at the appraised price thereof: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the appraised price, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final

entry as now provided by law where the price of land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this act.

"Sec. 7. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums to which the said tribe may be entitled, which shall draw interest at three per cent per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization.

"Sec. 8. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose, and in case any of said sections, or parts thereof, are lost to said State by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section

one of this act, to locate other lands not otherwise appropriated, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement: *Provided*, That in any event not more than two sections shall be granted to the State in any one township, and lands must be selected in lieu of sections sixteen or thirty-six, or both, or any part thereof, within the township in which the loss occurs, except in any township where there may not be two sections of unallotted lands, in which event whatever is required to make two sections may be selected in any adjoining township.

"Sec. 9. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of not more than one hundred and twenty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section eight of this act. And there is hereby appropriated the further sum of thirty-five thousand dollars, or so much thereof as may be necessary, for the purpose of making the appraisement and classification provided for herein: *Provided*, That the latter appropriation, or any further appropriation hereafter made for the purpose of carrying out the provisions of this act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribe.

"Sec. 10. That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, granted to the State of South Dakota, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States

prohibiting the introduction of intoxicants into the Indian country.

"Sec. 11. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: *Provided*, That nothing in this act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act."

And the Senate agree to the same.

AMENDMENT OF TITLE.

That the Senate recede from its disagreement to the amendment of the House.

Robert J. Gamble,
Moses E. Clapp,
W. E. Purcell,

Managers on the part of the Senate.

Chas. H. Burke,
P. P. Campbell,
John H. Stephens,

Managers on the part of the House.

The report was agreed to.

[45 Cong. Rec. 6379-6381 (1910)]

ROSEBUD INDIAN RESERVATION, S. DAK.

Mr. BURKE of South Dakota submitted the following conference report on the bill (S. 183) authorizing the sale and disposition of a portion of the surplus and unallotted land of the Rosebud Indian Reservation, in South Dakota, for printing under the rule.

The conference report (No. 1368) and statement are as follows:

CONFERENCE REPORT.

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 183) authorizing the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House, and agree to the same with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following:

"That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh, south of the White River, and being described and bounded as follows: Beginning at a point on the third guide

meridian west where the township line between townships thirty-nine and forty intersects the same, thence north along said guide meridian to the middle of the channel of White River, thence west along the middle of the main channel of White River to the point of intersection with the line dividing the Rosebud and the Pine Ridge Indian reservations, thence south along the boundary line between said reservations to the township line separating townships thirty-nine and forty, thence east along said township line to the place of beginning, except such portions thereof as have been or may be hereafter allotted to Indians or otherwise reserved, and except lands classified as timber lands: *Provided*, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation: *And provided further*, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: *And provided further*, That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other authority, of any religious organization heretofore engaged in mission or school work on said reservation for such lands thereon (not included in any town site hereinafter provided for) as have heretofore been set apart to such organization for mission or school purposes.

"Sec. 2. That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be

opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: *Provided*, That prior to said proclamation the allotments within the portion of the said Rosebud Reservation to be disposed of as prescribed herein shall have been completed: *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Philippine insurrection as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes as amended by the act of March first, nineteen hundred and one, shall not be abridged.

"Sec. 3. That before any of the land is disposed of, as hereinafter provided, and before the State of South Dakota shall be permitted to select or locate any lands to which it may be entitled by reason of the loss of sections sixteen or thirty-six, or any portions thereof, by reason of allotments thereof to any Indian or Indians, the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe; and he is hereby authorized to set apart and reserve for school, part, and other public purposes not more than ten acres in any town-site, and patents shall be issued for the lands so set apart and reserved for school, park, and other public purposes to the municipality legally charged with the care and custody of lands

donated for such purposes. The purchase price of all town lots sold in town-sites, as hereinafter provided, shall be paid at such time and in such installments as the Secretary of the Interior may direct, and he shall cause not more than twenty per centum of the net proceeds arising from such sales to be set apart and expended under his direction in the construction of schoolhouses or other public buildings or in improvements within the town-sites in which such lots are located. The net proceeds derived from the sale of such lots and lands within the town-sites as aforesaid, less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements, shall be credited to the Indians, as hereinafter provided.

"Sec. 4. That the price of said lands entered as homesteads under the provisions of this act shall be fixed by appraisalment, as herein provided. The President shall appoint a commission to consist of three persons to classify, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections sixteen and thirty-six or other lands which may be selected in lieu thereof by the State of South Dakota, in each of said townships, said commission to be constituted as follows: One resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians. That within twenty days after their appointment the said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect, classify, and appraise, in one hundred and sixty acre tracts each, all of the remaining unallotted lands embraced within

that portion of the reservation described in section one of this act. In making such classification and appraisalment said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral and timber lands shall not be appraised: *Provided*, That timber lands may be classified without regard to acreage: *And provided further*, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians. That said commissioners shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection, classification, and appraisalment of said lands, and necessary expenses exclusive of subsistence to be approved by the Secretary of the Interior, such inspection, classification, and appraisalment to be completed within six months from the date of organization of said commission.

"Sec. 5. That said commission shall be governed by regulations prescribed by the Secretary of the Interior; and after the completion of the classification and appraisalment of all of said lands the same shall be subject to the approval of the Secretary of the Interior.

"Sec. 6. That the price of said lands disposed of under the homestead laws shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments, to be paid in two, three, four, five, and six years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore

made shall be forfeited and the entry canceled, and the lands shall be again subject to entry under the provisions of the homestead law at the appraised price thereof: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the appraised price, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this act.

"Sec. 7. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums to which the said tribe may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization.

"Sec. 8. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose, and in case any of said sections, or parts thereof, are lost to said State by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section one of this act, to locate other lands not otherwise appropriated, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement: *Provided*, That in any event not more than two sections shall be granted to the State in any one township, and lands must be selected in lieu of sections sixteen or thirty-six, or both, or any part thereof, within the township in which the loss occurs, except in any township where there may not be two sections of unallotted lands, in which event whatever is required to make two sections may be selected in any adjoining township.

"Sec. 9. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of not more than one hundred and twenty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section eight of this act. And there is hereby appropriated the further sum of thirty-five thousand dollars, or so much thereof as may be necessary, for the purpose of making the appraisal and classification provided for herein: *Pro-*

vided, That the latter appropriation, or any further appropriation hereafter made for the purpose of carrying out the provisions of this act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribe.

"Sec. 10. That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, granted to the State of South Dakota, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

"Sec. 11. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: *Provided*, That nothing in this act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act."

And the House agree to the same.

Amendment of title: That the senate recede from its disagreement to the amendment of the House; and the Senate agree to the same.

Chas. H. Burke,
P. P. Campbell,
Jno. H. Stephens,
Managers on the part of the House.

Robert J. Gamble,
Moses E. Clapp,
W. E. Purcell,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 183) authorizing the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect, submit the following written statement in explanation of the effect of the action agreed upon and recommended in the accompanying report as to said amendment:

The amendment agreed upon in conference, with two exceptions, is with slight pro forma changes the amendment inserted by the House as a substitute for the Senate bill.

The following changes in the House amendment have been made in conference. (The reference to page and line in each case refers to the page and line of the amendment.)

Page 1, line 6, the word "on" is changed to "at"; in line 7 the word "west" is inserted after "meridian;" in line 8 the word "crosses" is changed to "intersects" and the word "then" to "thence;" in line 11 the word "on"

is stricken out and the words "of intersection with the" inserted in lieu thereof.

Page 2, line 3, after the word "Indians," the following words are inserted, "or otherwise reserved, and except lands classified as timber lands;" in line 5 the word "desire" is changed to "elect;" in line 18 the word "herein" is changed to "hereinafter."

In section 2 the following words are stricken out: "That all applications for registration must show the applicant's name, post-office address, age, height, and weight, and be sworn to by him before any judge or clerk of a court of record of the county where such applicant resides, and."

Page 4, line 14, the word "in" is changed to "within;" in section 4, lines 23 and 24, the words "of the United States" are stricken out.

Page 5, in lines 19 and 20, the word "land" is changed to "lands," and in line 21 the word "all" is changed to "any;" in line 22 the words "shall not be disposed of but" are stricken out.

Page 6, line 1, a comma is inserted after "inspection," and the word "and" is stricken out, and after the word "classification" the words "and appraisalment" are inserted; in line 3 the same changes are made in phraseology; in section 6, line 12, the word "the" is stricken out.

Page 9, section 9, line 3, the word "thirty-five" is changed to "twenty-five," and in line 8 the word "twenty-five" is changed to "thirty-five." These changes are to correct errors that were made by inadvertence on the floor of the House. In section 10, line 17, after the word "sold," the words "set aside for town-site purposes, granted to the State of South Dakota" are inserted. This makes the section read as it was reported

from the committee and to conform to an amendment inserted by the Senate in H. R. 12438.

The House amendment of the title of the bill is agreed to.

Chas. H. Burke,
P. P. Campbell,
Jno. H. Stephens,
Managers on the part of the House.

[45 Cong. Rec. 6415-6416 (1910)]

ROSEBUD INDIAN RESERVATION, S. DAK.

Mr. BURKE of South Dakota. Mr. Speaker, I call up the conference report on the bill (S. 183) authorizing the sale and disposition of a portion of the surplus and unallotted lands of the Rosebud Indian Reservation, in the State of South Dakota, and making appropriations to carry the same into effect, and I ask unanimous consent that the statement be read in lieu of the report.

Mr. FITZGERALD. Pending that request, I wish to suggest to the gentleman that this ought to go over for the present. On looking through the report hastily I find that there has been eliminated a provision of some importance.

Mr. BURKE of South Dakota. That is the only elimination.

Mr. FITZGERALD. This may give rise to considerable controversy. I think the gentleman had better let it go over. I am trying to suggest a method that will expedite the matter. The gentleman from Illinois [Mr. Sabath] proposed an amendment that was agreed to by

a very large vote, and that has been eliminated in conference.

Mr. BURKE of South Dakota. The report was filed under the rule and printed in the Record.

Mr. FITZGERALD. If the gentleman calls up the report now, we will not expedite the disposition of it. It will require a quorum, and that the report be read, as well as the statement.

Mr. MANN. The gentleman from Minnesota, chairman of the Appropriations Committee, who has the sundry civil bill in charge, is not present.

Mr. FITZGERALD. But the gentleman from Ohio [Mr. Keifer] is ready to go on.

Mr. MANN. I would suggest whether or not it would not be practicable to rise later in the day from the consideration of the sundry civil bill and dispose of these matters.

Mr. BURKE of South Dakota. Mr. Speaker, I am perfectly willing. I am not responsible because there is not a quorum present.

Mr. FITZGERALD. I am not, either; but I am suggesting that the gentleman may be able to get an agreement to take it up later in the day. If it is called up now, there will be a controversy over it.

Mr. BURKE of South Dakota. I ask unanimous consent that the committee rise at 3 o'clock.

Mr. MANN. The gentleman can not do that.

Mr. LIVINGSTON. I suggest that we take it up at the end of the session at 5 o'clock in the afternoon.

Mr. FITZGERALD. The gentleman can dispose of these reports at the end of the day.

Mr. BURKE of South Dakota. There will not be a quorum at the end of the day, and we will be in the same position that we are now.

Mr. MANN. I think there will be no point made of no quorum at that time. The gentleman from Illinois [Mr. Sabath] is not here and probably did not know that the conference report was to be taken up.

Mr. FITZGERALD. As to Members being absent, the House meets at 11 o'clock one day and 12 o'clock another day, and there is no certainty about it.

Mr. BURKE of South Dakota. Mr. Speaker, would it be in order to ask that the consideration of the two reports on the two bills be made a special order at 3 o'clock to-day?

Mr. FITZGERALD. That time might come right in the middle of somebody's speech. I would not object if at some time during the day the gentleman moves that the committee rise.

Mr. BURKE of South Dakota. Mr. Speaker, I do not want to take anybody that may be speaking off the floor. The gentleman from Ohio [Mr. Keifer] assures me that some time about the middle of the afternoon he will move that the committee rise for the purpose of considering these reports, and if that is the understanding I will not press the consideration of this conference report at present.

[45 Cong. Rec. 6436-6437 (1910)]

ROSEBUD INDIAN RESERVATION, S. DAK.

Mr. BURKE of South Dakota. Mr. Speaker, I call up the conference report on the bill (S. 183) authorizing the sale and disposition of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provi-

sion to carry the same into effect, and ask unanimous consent that the statement may be read in lieu of the report.

The SPEAKER. The gentleman from South Dakota calls up a conference report and asks unanimous consent that the statement be read in lieu of the report. Is there object?

There was no objection.

The Clerk read the statement.

[For statement and report see Record of May 16, 1910.]

Mr. BURKE of South Dakota. Mr. Speaker, I think it will appear from the reading of the report and statement that substantially the only change in the bill from the way it passed the House, except as to correcting some errors and changes of words where a word was inadvertently used, is in the amendment which was incorporated in the bill on the floor of the House in Committee on the Whole, offered by the gentleman from Illinois [Mr. Sabath]. I will say very briefly that evidently the gentleman who offered the amendment did not sufficiently consider what he was endeavoring to do. Under the bill as reported now by the conferees, if it becomes a law, it will mean that we have enacted the same law that has been in operation for a number of years upon the subject of disposing of Indian lands. It provides that the lands shall be disposed of under regulations to be provided by the President in a proclamation, and it gives the President and the Interior Department the greatest latitude in making regulations. They can make the places of registration at such points as they desire. They are not limited at all. Under that law regulations heretofore have been promulgated, and among other things is regulation No. 2, which provides that all persons qualified to make homestead entry,

who desire to acquire title to any of these lands, must go in person to some one of the places designated in the proclamation, and I may say in passing that usually these places designated have been places at which there is located a United States land office and in the locality where the lands are located that are to be disposed of. Regulation No. 3 provides that when the applicant for registration visits one of the registration points between the dates named he must swear to his application for registration before a notary having a certificate of authority, and so forth, and I may say also that it has been the practice of the department to require of notaries public that they shall make an application to the Secretary of the Interior and shall obtain a certificate of authority before they are recognized in connection with registering applicants.

The notaries are then required to form themselves into an organization, elect a president and a treasurer and other officers. They are required to have their office at one place. They are required to keep the office open for business twenty-four hours in the day, and they divide into shifts of three each, each working eight hours. When a person enters the place of registration the first thing he encounters is the cashier's desk, where he pays 25 cents, and there he receives his blank, and then goes to any one of the several notaries who are there assembled and is sworn to the affidavit. These blanks are not given out at all except as they are given to each individual as he passes in and pays the fee. The result of that has been that it enables the department to prevent irresponsible persons from taking these applications and using their notarial seal, as they frequently have done, improperly. It prevents them from going to the train and importuning people who may arrive or, perhaps, going on the train. The business has been

conducted orderly, and it has worked very satisfactorily; at least that is the judgment of those who have had charge of openings, and that the system can not be improved upon. I want to say for the information of the gentleman from Illinois, whom I presume will follow me, that all his amendments does is this:

That all applications for registration must show the applicant's name, post-office address, age, height, and weight, and be sworn to by him or any judge or clerk of a court of record of the county where such applicant resides, and—

There is not a word in his amendment as to what shall be done with the application, that it shall be transmitted by mail, but on the contrary it simply supersedes a regulation that has heretofore been in effect that these applications shall be sworn to before a notary public, who is commissioned by the Interior Department. I presume, if the amendment was to remain in the law, that it would amount to no more than that people who go out to register would take with them their application, sworn to before the clerk of the court or the judge of the county in which they reside.

Mr. FITZGERALD. Would it not be very easy to perfect the amendment so as to provide for that just as the rest of the bill was perfected?

Mr. BURKE of South Dakota. If I were to go into the merits of the matter, I certainly should have greater reasons why this amendment should not remain in the bill than under the circumstances. I hope the conference report will be adopted. How much time does the gentleman from Illinois [Mr. Sabath] desire?

Mr. SABATH. Ten or fifteen minutes.

Mr. BURKE of South Dakota. I yield ten minutes to the gentleman from Illinois [Mr. Sabath].

Mr. SABATH. Mr. Speaker, in the first place I desire to state that I appreciate the opportunity to be present when this conference report is being considered. It was not due to the fact that I did not know that the House was to meet at 11 o'clock that I was not present this morning, but it was due to the fact that I was obliged to be at a meeting of the committee of which I am a member, and for that reason I was not here in due time. Mr. Speaker, it is not my intention to impose upon the membership of this House. Were it not for the fact that I am greatly interested in this bill and in this amendment, I would not ask even for the short time of ten minutes. At the time I introduced this amendment I was under the impression, if the amendment would be adopted, that it would give, and I believe now it would give, every citizen an opportunity to register for this land. It is all true what the gentleman from South Dakota states about the arrangements that are being made; but if my amendment would have prevailed, and would prevail, all this could be eliminated and the people could register from their home districts and mail the registration to the registers at the place of opening, and for that reason it would not cost, and it will not cost, the Government any more than it does under the present faulty system under which the drawings are had.

I stated the last time that a great many people are precluded from registering for these homesteads, and I must repeat it again. It is mighty hard for a man, especially a poor man, to risk from \$50 to \$100, or perhaps even more, and to take great chances of going down there and registering, especially when he has but one chance in about 100 or 150 against him. Now, this Government should not lend itself to advocate and foster gambling. I believe that if my amendment will

prevail, and if the House will vote down the conference report, every man will have a chance and an equal opportunity without taking the great risk of spending a week or ten days in going and remaining there and spending large sums of money merely for the purpose of registering for a chance in the drawing.

Furthermore, I believe that the lands will be taken up and cultivated in a much shorter space of time if my amendment will prevail, because those people are not of a kind that would register, and if successful in drawing a homestead, then relinquish and sell out their interests, as is frequently done under the present system. They will be more than pleased to go there and work the land, thereby settling the district within a short space of time and benefit the country on the whole.

Personally, I am still in the opinion that no one else but the railroads and the speculators benefit under the present system. No one else can possibly object, unless it be the gentlemen who are interested in that locality, the merchants and hotel proprietors, perhaps, who would derive great profits from dealings with these people who go down there in order to register. I am of the opinion that it will not require \$150,000 more under this provision, as the gentleman has stated, nor \$150 more than it costs now, because all that is required is to mail the registry or the application, and the register there places the number on the application and files it with the rest of them. That is all that is required. Then the drawing is had, and it should not make such a great difference whether we have 50,000 applicants or whether we have 150,000 or 250,000 applicants.

Mr. HITCHCOCK. Will the gentleman permit an interruption?

Mr. SABATH. With pleasure.

Mr. HITCHCOCK. I think my friend from Illinois is mistaken when he says the West has no other interest in the matter than that which he recites. The West is interested in having these lands taken up by practical farmers, and under the present practice it is a rule that only those who know something about farming visit the places and participate in the drawing.

But the gentleman can see, if his amendment prevails, chances will be taken by a great many people throughout the East who know nothing whatever about farming. Now, when such a person chances to make a lucky drawing he would have very little value to us in the West, nor could he succeed for himself. I am speaking of a man who knows nothing about farming. So the West has a slightly different interest than the one the gentleman mentions. We are interested in having practical farmers take these lands. They are the ones who take the trouble, as a rule, to visit these drawings and take part in them.

Mr. SABATH. In answer to the gentleman I will state that it is my opinion that the people who go to the trouble to register are men who do take a great interest in farming, and I will say that we have as many farmers in the State of Illinois as the gentleman may have in his own State. And I may say that some of the best farmers that are now in the State of Nebraska came originally from the State of Illinois and from the adjoining States. [Applause.] And I know that a great many people in my own district are practical farmers, but they never had the opportunity to purchase a farm or settle on a farm, and they are more than anxious and more than pleased to have an opportunity of this kind to secure farms, and I assure the gentleman that if they do settle there he will find that they are practical farmers and practical agriculturists.

Mr. HITCHCOCK. I think the gentleman is right in saying that a large percentage of those who are interested in securing farms in the West come from Illinois. That has been the experience in the past. It does not require anything like \$100 or \$150 of expense for a man to visit either Nebraska or South Dakota. The excursion rates which are put into effect at such times are very low, and I should say that \$25 or \$30 would come nearer to covering the expenses from a reasonable distance to this drawing.

Mr. SABATH. From a reasonable distance it may not cost more than \$25 or \$30 for railroad fare. But the gentleman must take into consideration that a man is obliged to leave his work, thus losing four or five and sometimes ten days' pay. He is obliged to live there about the time of such drawings. The gentleman knows, I presume, from experience, especially now when the cost of living is so high, that at these places the living is still higher, and it costs much more there than it would at home. And I believe a man would find it extremely difficult to get along on less than \$100, traveling even from my own city of Chicago and practicing rigid economy.

From a fair estimate I believe that it would cost each and every applicant who would be obliged to go there about \$100. But if it should cost \$50, why should we impose that amount on a man of that kind? It is the poor man who will go there; the rich man will not go down there to gain a homestead. He, as a rule, has already 160 acres, or property that is worth the equivalent in value of a homestead, and he is therefore precluded from registering and participating in the drawings. Therefore, I contend, Mr. Speaker, that if the House desires to adhere to the letter and spirit of the homestead laws, which primarily are intended to help

the citizen with little financial means, but possessed of an honest purpose to settle and till the land which is allotted under these laws, it is in duty bound to pass such amendments or laws as will give a poor man an opportunity to avail himself of the provisions of the homestead laws at the lowest possible expense. My amendment is in accord with the real intent of these laws, and if it will prevail, as I earnestly hope it will, the poor man will be given an opportunity to participate in the drawings at a minimum expense to himself.

Mr. BURKE of South Dakota. I move the adoption of the report.

The question was taken, and the Speaker announced that the ayes seemed to have it.

Mr. SABATH. Division!

The House divided; and there were—ayes 40, noes 14. So the conference report was agreed to.

[45 Cong. Rec. 6496 (1910)]

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the President pro tempore:

S. 183. An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties, in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provisions to carry the same into effect;

[45 Cong. Rec. 6517 (1910)]

ENROLLED BILLS SIGNED.

* * *

S. 183. An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

[45 Cong. Rec. 7128-7129 (1910)]

PRESIDENTIAL APPROVALS.

* * *

On May 30, 1910:

S. 183. An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

[#35B]

(Senate report to accompany S. 183)

[S. Rep. No. 68, 61st Cong. 2d Sess. I-5 (1910)]

Report No. 68.

SALE OF PORTION OF SURPLUS LANDS ON
ROSEBUD RESERVATION.

January 17, 1910. Ordered to be printed.

Mr. Gamble, from the Committee on Indian Affairs,
submitted the following

REPORT.

[To accompany S. 183.]

The Committee on Indian Affairs, to whom was referred the bill (S. 183) to authorize the sale and disposition of a portion of the unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect, having had the same under consideration, beg leave to report that said bill do pass with the following amendments:

On page 1, strike out lines 8, 9, 10, 11, and 12; and on page 2, strike out line 1 and down to and including the word "meridian" in line 12, and insert in lieu thereof the following:

On the third guide meridian, west, where the township line between townships thirty-nine and forty intersects the same, thence running west on said township line to a point where the same intersects

the boundary line between the Rosebud and Pine Ridge Indian reservations; thence north on the boundary line between said reservations to a point where the same intersects the center of the main channel of the White River, thence in an easterly direction along the center of the main channel of said White River to a point where the third guide meridian, west, intersects the same, thence south on said third guide meridian, west,

On page 4, line 19, strike the words "Indian Bureau" and insert in lieu thereof the words "Interior Department."

On page 4, line 24, after the word "empowered," insert the words "to select such clerks and assistants at such compensation."

On page 5, line 2, strike out the word "each" where the same last appears in said line and insert in lieu thereof the words "that portion of said."

On page 5, line 8, after the word "mineral," insert the words "and timber."

On page 5, line 8, after the word "appraised," insert the following:

Provided, That timber lands shall be classified without regard to acreage: *And provided further*, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians.

On page 5, line 11, after the word "expenses," insert the words "exclusive of subsistence."

On page 7, line 2, after the word "prescribe," insert the words "and patents therefor shall be issued to the purchasers."

On page 7, line 9, after the word "Statutes," insert a semicolon and the following:

And he is hereby authorized to set apart and reserve for school, park, and other public purposes not

more than ten acres in any town site, and to issue patents for such reserved tracts to the municipality legally charged with the care and custody of lands donated for such purposes. And the Secretary of the Interior shall cause not more than twenty per centum of the net proceeds arising from such sales to be set apart and expended under his direction in aiding the construction of schoolhouses or other buildings or improvements in the town sites in which such lots are located.

On page 7, line 10, after the word "lands," insert the words "less the amount set aside to aid in the construction of schoolhouses or other buildings or improvements."

On page 8, line 2, strike out the words "one dollar and twenty-five" and insert in lieu thereof "two dollars and fifty."

On page 8, line 9, strike out the word "occupied" and insert in lieu thereof the words "otherwise appropriated."

On page 8, line 13, after the word "settlement," strike out the period and insert in lieu thereof a colon and the following:

Provided further, That in any event nor more than two sections shall be granted to the state in any one township, and lands must be selected in lieu of sections sixteen or thirty-six, or any part thereof, within the township in which the loss occurs.

On page 8, line 16, strike out the word "sixty-five" and insert in lieu thereof the words "one hundred and twenty-five."

On page 8, line 20, strike out the word "twenty-five" and insert in lieu thereof the word "thirty-five."

Add the following as a new section to the bill:

Sec. 10. That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for

town site purposes, or granted to the State or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

The present area of the Rosebud Indian Reservation aggregates about 1,800,000 acres. The lands proposed to be opened to settlement under the provisions of this bill embrace an area of about 830,000 acres. It is the understanding of your committee that practically all the allotments to adult Indians on this reservation have been made. Provision has been made under recent statutes for the allotment of all the minor children on the reservation, and this work is now in progress and it is understood that practically all such allotments have been made to those so desiring allotments within the area described in section 1 of this bill.

The reservation is yet large, and in the judgment of your committee the surplus and unallotted lands are unnecessary for the use of the Indians, and the opening of the reservation would result in a large increase in the settlement and the development of that part of the State, and would enhance to a very large extent the holdings of the Indians. Your committee regard it of the highest importance, not only to the Indians themselves but to the people of the State and the General Government, that all surplus and unallotted lands should be opened to settlement at the earliest practicable date.

The bill provides that prior to the issuance of the proclamation for the opening of the lands to settlement the Secretary of the Interior shall cause allotments to be made to all Indians and minors belonging to or holding tribal relations with the Indians upon the reservation who have not heretofore been allotted. It also provides that the Secretary of the Interior, in his discretion, may per-

mit Indians who have allotments and to receive in lieu thereof allotments anywhere within the reservation proposed to be diminished.

Sections 16 and 36 of the lands in each township are not to be disposed of, but are reserved for the use of the common schools of the State, and these lands are to be paid for by the Government in conformity with the provisions of the act admitting the State of South Dakota into the Union. The Secretary of the Interior is authorized to reserve such lands as are necessary for agency, school, and religious purposes in conformity with the practice of the Government in measures of this character.

The lands to be opened are to be inspected, appraised, and valued by a commission for that purpose appointed by the President, which appraisement is subject to the approval of the Secretary of the Interior. The lands to be opened are reserved for homesteads, and one-fifth of the price so fixed for the land is to be paid upon entry thereof, and the balance in five equal annual installments. The Secretary of the Interior is also authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests. The Secretary of the Interior is further authorized to set apart and reserve for school, park, and other public purposes not more than 10 acres in any one town site. He is further authorized to cause not more than 20 per cent of the net proceeds received from the sale of the town sites to be set apart and expended under his direction in aiding in the construction of schoolhouses or other buildings or improvements in the town sites. Considering the fact that the Indian allotments are relieved from taxation for a period of twenty-five years and the Indians are to receive like advantages with the whites in connection with the above, it is thought by your committee that such a provision is wise, equitable, and just not only to the Indians but to the prospective settlers.

The moneys realized from the sales of the town sites, less the amount set apart to aid in the construction of schoolhouses or other buildings or improvements, are to be applied to the benefit of the tribe. The moneys derived from the sale of the lands as well as the town sites, with the exception above referred to, are to be deposited in the Treasury of the United States to the credit of the tribe, and the same shall draw interest at the rate of 3 per cent per annum, and these moneys shall be expended for the benefit of the tribe under the direction of the Secretary of the Interior.

It appears there is a very limited amount of timber upon that part of the reservation proposed to be opened, and the Indians were most solicitous that they should be protected and the timber reserved for their use. It is thought by your committee that this request by the Indians is just and reasonable and that the timber lands should be classified without regard to acreage and that they should be reserved for the use of the Indians. Under such conditions the timber lands could be preserved and protected under the authority of the Interior Department, and such reasonable use could be made of them for the benefit of the Indians as would be wise and just and conserve their best interests.

Upon the recommendation of the department, an additional section has been added to the bill which prohibits the introduction of intoxicating liquors upon the lands to be opened for a specified period. It is felt by your committee that such a prohibition would serve as a protection, especially to the Indians, and their interests would be highly conserved if the use of intoxicants were prohibited. This is a matter of the highest concern, not only to the Indians themselves but to the General Government and to the people of the State, that the Indians should be safeguarded as much as possible from the evils resulting therefrom.

Although Congress has full power to enact legislation of this character without the consent of the Indians, it was felt the Indians should be fully advised as to the provisions of the pending measure and their views should be asked in regard thereto. The bill in question was submitted to the Indians of the reservation by a competent and experienced Indian inspector and the wishes of the Indians were sought to be met in a fair and just spirit. A number of the amendments proposed are in line with the suggestions and requests of the Indians, especially those as to the price to be paid for the school lands and for the reservation of the timber lands within the area proposed to be opened for the use and benefit of the Indians. It is the understanding of your committee that the other amendments suggested are entirely satisfactory to the members of the Indian tribe.

The communication of the Secretary of the Interior, reporting upon this bill, is herewith submitted and made a part of this report.

Department of the Interior,
Washington, January 13, 1910.

Sir: The department has received, by your reference, for recommendation and report a copy of Senate bill 183, authorizing the sale and disposition of a portion of the surplus unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota.

Inspector McLaughlin submitted this matter to the Indians, who, while they were opposed to opening all the lands described in the bill, indicated a disposition to acquiesce in the opening of a part of the lands of their reservation lying north of the tenth standard parallel. In connection with this, however, the Indians insisted that

they should be paid at the rate of \$2.50 per acre for the lands granted to the State of South Dakota, and expressed a strong desire that the timber on the part of the reservation to be opened be reserved for the Indians. It is believed these requests of the Indians are just and reasonable and should be complied with.

It is recommended that the description of the lands to be opened be changed to read as follows:

"Commencing at a point on the western boundary of the Rosebud Indian Reservation, in the State of South Dakota, where it intersects the township line between townships 39 and 40 north, running thence north along said boundary line to a point in the center of the main channel of the White River; thence easterly along the center of the main channel of said White River to a point where the range line between ranges 24 and 25, west of the sixth principal meridian, intersects the same; thence south on said range line between ranges 24 and 25 west, to a point where it is intersected by the township line between townships 39 and 40 north; thence west along said township line between townships 39 and 40 north to the place of beginning."

The words "Indian Bureau," in line 19, on page 4, should be stricken out and the words "Interior Department" inserted in lieu thereof. There should be inserted after the word "empowered," in line 24, of page 4, the words "to select such clerks and assistants at such compensation." The word "each," in line 2, page 5, should be stricken out and the words "that portion of said" be inserted.

If the timber land could be appraised only in 160-acre tracts, it would, perhaps, be found necessary to include in such classification much valuable agricultural land in order to embrace all the timber. To meet this condition it is suggested that there be inserted after the word "min-

eral" in line 8, on page 5, the words "and timber;" and after the word "appraised," in said line 8, there be inserted the following: "*Provided*, That timber lands shall be classified without regard to acreage: *And provided further*, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians."

It is believed that a compensation of \$10 per day and the necessary expenses is ample, and for the purpose of certainty in this regard, it is suggested that there be inserted after the word "expenses" in line 11, page 5, the words "exclusive of subsistence."

It is entirely just and reasonable that the Indians should be paid for the lands granted to the State of South Dakota at the rate of \$2.50 per acre, and it is therefore suggested that the bill be amended by striking out the words "one dollar and twenty-five cents" in line 2, on page 8, and inserting in lieu thereof the words "two dollars and fifty cents." Should the bill be amended in this respect it would be necessary to increase the appropriation provided for in section 8 for lands granted to the State, by striking out "sixty-five" in line 16, on page 8, and inserting in lieu thereof "one hundred and twenty-five."

It is found that the work of allotting, classifying, and appraising Indian lands costs, approximately, \$1,000 a township. Since there are about 36 townships within that part of the Rosebud Reservation proposed to be opened by the bill, the department believes that the sum of \$35,000 will be needed for this work, and therefore suggests that "twenty-five" in line 20, on page 8, be stricken out and "thirty-five" be inserted in lieu thereof.

There are two other matters which the department deems it appropriate to bring to the attention of your committee in connection with this bill. It has been suggested it would be good policy to set aside within town

sites established on Indian reservations lands for school, park, and other public purposes, and to apply not more than 20 per cent of the net proceeds from sales of lots in such town sites to aid the construction of schoolhouses and other public buildings in such towns. Provisions to accomplish this have been inserted in H.R. 12440, a bill to authorize the sale and disposition of the land involved in the bill here under consideration. A bill has also been introduced in the House of Representatives (H.R. 6740) making like provisions applicable to all town sites established on Indian reservations and also on the public lands.

If your committee deems it advisable to provide for these matters in this bill, it could be done by inserting after the word "statutes" in line 9, page 7, a semicolon, and the following:

"And he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than ten acres in any town site, and to issue patents for such reserved tracts to the municipality legally charged with the care and custody of lands donated for such purposes. And the Secretary of the Interior shall cause not more than twenty per centum of the net proceeds arising from such sales to be set apart and expended under his direction in aiding the construction of schoolhouses or other buildings or improvements in the town sites in which such lots are located."

If this be done, there should be inserted after the word "lands," in line 10, on page 7, the words "less the amount set aside to aid in the construction of schoolhouses or other buildings or improvements."

It has been suggested that there should be inserted in this and like bills a clause to read as follows:

That the lands allotted; those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the State or otherwise disposed of, shall

be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country."

It has been found that like provisions inserted in other laws have proved of benefit to the Indians and of great assistance to this department in enforcing the laws prohibiting the sale of intoxicants to Indians. The Supreme Court in the case of *Dick v. United States* (208 U.S. 340) has upheld the validity of such a law.

This department recommends the adoption of the changes herein suggested.

Very respectfully,

R.A. Ballinger,
Secretary

Hon. Moses E. Clapp,
Chairman Committee on Indian Affairs,
United States Senate.

[#35C]

(House of Representatives report to accompany S. 183)

[H.R. Rep. No. 429, 61st Cong. 2d Sess. 1-5 (1910)]

Report No. 429

DISPOSITION OF CERTAIN LANDS IN
ROSEBUD RESERVATION, S. DAK.

February 10, 1910. — Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Burke, of South Dakota, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany S. 183.]

The Committee on Indian Affairs, to whom was referred Senate bill 183, submit the following report:

This bill is similar to H. R. 12437 reported by this committee on January 27, 1910, and affects the same land. The committee recommend amending the same to conform to the House bill by striking out all after the enacting clause and inserting the provisions of the House bill. Also amend the title to conform to the title of H. R. 12437, so as to read as follows:

To authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties in the Rosebud Indian Reser-

vation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

The report on H. R. 12437 is as follows:

[House Report No. 332, Sixty-first Congress, second session.]

The Committee on Indian Affairs, to whom was referred House bill 12437, submit the following report:

The purpose of this bill is to authorize the sale and disposition of that portion of the surplus and unallotted lands in the Rosebud Reservation in South Dakota included in the counties of Mellette and Washabaugh. The committee recommends the passage of the bill, with the following amendments:

Page 3, line 8, strike out the words "Pine Ridge," and insert in lieu thereof the word "Rosebud."

Page 4, line 6, after the word "other," insert the word "public," so that the line will read, "for school, park, and other public purposes," etc.

Page 4, line 17, after the word "aforesaid," insert the following words: "less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements," so that it will read, "of such lots and lands within the town sites as aforesaid, less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements, shall be credited to the Indians, as hereinafter provided."

Page 5, line 1, after the word "thirty-six," insert the words "or other lands which may be selected in lieu thereof by the State of South Dakota."

Page 5, line 17, after the word "mineral," insert the words "and timber," and after the word "appraised" insert the following words: "Provided, That timber land

may be classified and appraised without regard to acreage: *And provided further*, That any lands classified as timber lands shall not be disposed of, but shall be reserved for the use of the Rosebud Indians."

Page 5, line 20, after the word "expenses," insert the words "exclusive of subsistence."

Page 6, line 15, strike out the words "reoffered for sale and," and insert in lieu thereof the words "again subject to," so that it will read, "and the lands shall be again subject to entry under the provisions," etc.

Page 7, line 21, strike out the word "three," and insert in lieu thereof the word "five."

Page 8, line 18, after the word "thirty-six," insert the words "or both."

Page 9, line 5, strike out the word "twenty-five," and insert in lieu thereof the word "thirty-five."

Page 9, lines 14 to 20, strike out all of section 10, and insert in lieu thereof:

"Sec. 10. That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, or granted to the State, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country."

The Rosebud Indian Reservation when set aside as a separate reservation under the Sioux act of 1889 contained something over 3,000,000 acres of land. In 1904 the unused and unallotted portion of the reservation in Gregory County, about 500,000 acres, was disposed of and the Indians received therefrom something more than \$1,500,000. In the Fifty-ninth Congress a law was enacted authorizing the sale of the unused and unallotted lands in that portion of the reservation in Tripp County, comprising about 1,000,000 acres, under a bill substantially in the same form as the bill now under considera-

tion, except that the price of the land was fixed in the law, whereas under this bill the price is to be fixed by appraisal. The proclamation for the disposition of Tripp County lands was not issued until last year, and therefore it was not subject to filing until that time. A very large part of the lands has been entered under the homestead laws, but it is not possible to state just how much will be received from the sale of the lands in Tripp County; it will, however, undoubtedly amount to \$4,000,000.

The area comprised in the present bill is about 800,000 acres and the proceeds from the sale thereof, under the terms of the bill, will probably amount to \$3,000,000. There will still be left a reservation containing about 1,000,000 acres, and as the Indians have all been allotted there is no occasion for continuing a reservation larger than it will be when Mellette County is disposed of.

The bill is carefully safeguarded and provides that Indians who have taken allotments in the area proposed to be disposed of may relinquish such allotments and be reallocated within the diminished reservation, if they so elect. There is also a provision reserving sections 16 and 36 of the lands in each township for the use of the common schools of the State of South Dakota, to be paid for by the Government at \$2.50 per acre. The granting of these lands to the State is in accordance with the provisions of the enabling act admitting South Dakota into the Union.

Provision is made to reserve lands used for agency, school, and religious purposes.

The bill provides that there shall be appointed a commission consisting of three persons, one a resident citizen of the State of South Dakota, one a person holding tribal relations with the Rosebud Indians, and the other a representative of the Interior Department, the commission to

be appointed by the President. The commission are required within six months after their appointment to examine, qualify, and appraise lands that are to be disposed of, and the appraised valuation will be the price to be paid by the settler, who is required to pay one-fifth thereof in advance and the balance in five equal annual installments. The appraisement is subject to the approval of the Secretary of the Interior.

Provision is made directing the Secretary of the Interior to reserve from said lands such tracts for town site purposes as in his opinion may be advisable, and the same shall be surveyed into lots and blocks and disposed of under regulations to be prescribed by him, and the proceeds from the sale to go to the credit of the Indians. The Secretary of the Interior is required, however, to reserve not more than 10 acres in each town site for school, park, and other public purposes, and he is authorized to withhold 20 per cent of the net proceeds from the sale of the town site, which is to be expended in aiding in the construction of schoolhouses or other public buildings in the town.

It is the opinion of the department, as expressed in a communication to this committee on H. R. 6740, that this is a wise provision and that it will probably mean that more money will be received from the sale of town lots net to the Indians than if they received all the proceeds without such provision. The proceeds derived from the sale of the lands and the town lots, except the 20 per cent as above stated, are to be deposited in the Treasury to the credit of the Rosebud Indians, with interest thereon at 3 per cent per annum, and shall be subject to appropriation for their support under article 12 of the agreement made with the Sioux Indians dated March 2, 1889.

The communication from the Secretary of the Interior on H. R. 6740, referred to above, dated December 21, 1909, relative to the provision just referred to, states:

"Regarding the provision in H. R. bill No. 6740, authorizing the expenditure, under the direction of the Secretary of the Interior, of 20 per cent of the net proceeds derived from the sale of town lots in constructing schoolhouses or other public buildings or improvements, it is evident that such a provision would result in a far more rapid growth, of a substantial nature, of the towns than would be the case if the construction of schools and public buildings were left to the municipal authorities. This provision would make available, almost immediately, funds for the erection of school buildings, and insure that such buildings would be adequate and sanitary.

"It is also evident that the value of town lots, within a town site which is assured funds for the erection of substantial and ample schools and other public buildings, would be enhanced by such an assurance, and it is believed that by properly placing these advantages before the public in conducting the sale of town lots, the net proceeds to be derived therefrom for the benefit of the Indians entitled would be equal to if not greater than would be the case if 20 per cent of the proceeds were not made available for public improvements."

While there does not appear to be any timber upon the lands affected by this bill, the committee thought it advisable to provide that in case there is any timber land it shall not be disposed of, but shall be reserved for the use of the Indians.

The amendment proposed and adopted for section 10 of the bill is in accordance with precedents and is a wise provision, as it is generally recognized that it is of the greatest importance that intoxicating liquors be kept as far as possible from the Indian, and that a provision such as this is not only for their best interests, but will be of equal benefit to the people who will settle and develop the area described in the first section of the bill.

The bill is drafted in accordance with negotiations conducted by the well-known Indian inspector, Major McLaughlin, who visited the reservation and negotiated with the Indians, and they are satisfied to have the unallotted lands described herein disposed of.

The money appropriated by the bill is all reimbursable, and immediately after the opening takes place the same will be repaid into the Treasury from proceeds from disposition of the lands.

The Secretary of the Interior in reporting upon a bill in the Senate (S. 183) substantially in the same form as this bill, reported as follows (see S. Rept. No. 68):

Department of the Interior,
Washington, January 13, 1910.

Sir: The department has received, by your reference, for recommendation and report, a copy of Senate bill 183, authorizing the sale and disposition of a portion of the surplus unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota.

Inspector McLaughlin submitted this matter to the Indians, who, while they were opposed to opening all the lands described in the bill, indicated a disposition to acquiesce in the opening of a part of the lands of their reservation lying north of the tenth standard parallel. In connection with this, however, the Indians insisted that they should be paid at the rate of \$2.50 per acre for the lands granted to the State of South Dakota, and expressed a strong desire that the timber on the part of the reservation to be opened be reserved for the Indians. It is believed these requests of the Indians are just and reasonable and should be complied with.

It is recommended that the description of the lands to be opened be changed to read as follows:

"Commencing at a point on the western boundary of the Rosebud Indian Reservation, in the State of South Dakota, where it intersects the township line between townships 39 and 40 north, running thence north along said boundary line to a point in the center of the main channel of the White River; thence easterly along the center of the main channel of said White River to a point where the range line between ranges 24 and 25, west of the sixth principal meridian, intersects the same; thence south on said range line between ranges 24 and 25 west to a point where it is intersected by the township line between townships 39 and 40 north; thence west along said township line between townships 39 and 40 north to the place of beginning."

The words "Indian Bureau," in line 19, on page 4, should be stricken out and the words "Interior Department" inserted in lieu thereof. There should be inserted after the word "empowered," in line 24 of page 4, the words "to select such clerks and assistants at such compensation." The word "each," in line 2, page 5, should be stricken out and the words "that portion of said" be inserted.

If the timber land could be appraised only in 160-acre tracts, it would perhaps be found necessary to include in such classification much valuable agricultural land in order to embrace all the timber. To meet this condition it is suggested that there be inserted after the word "mineral," in line 8, on page 5, the words "and timber;" and after the word "appraised," in said line 8, there be inserted the following: "*Provided*, That timber lands shall be classified without regard to acreage: *And provided further*, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians."

It is believed that a compensation of \$10 per day and the necessary expenses is ample, and for the purpose of

certainty in this regard, it is suggested that there be inserted after the word "expenses," in line 11, page 5, the words "exclusive of subsistence."

It is entirely just and reasonable that the Indians should be paid for the lands granted to the State of South Dakota at the rate of \$2.50 per acre, and it is therefore suggested that the bill be amended by striking out the words "one dollar and twenty-five cents" in line 2, on page 8, and inserting in lieu thereof the words "two dollars and fifty cents." Should the bill be amended in this respect it would be necessary to increase the appropriation provided for in section 8 for lands granted to the State, by striking out "sixty-five" in line 16, on page 8, and inserting in lieu thereof "one hundred and twenty-five."

It is found that the work of allotting, classifying, and appraising Indian lands costs, approximately, \$1,000 a township. Since there are about 36 townships within that part of the Rosebud Reservation proposed to be opened by the bill, the department believes that the sum of \$35,000 will be needed for this work, and therefore suggests that "twenty-five" in line 20, on page 8, be stricken out and "thirty-five" be inserted in lieu thereof.

There are two other matters which the department deems it appropriate to bring to the attention of your committee in connection with this bill. It has been suggested it would be good policy to set aside within town sites established on Indian reservations lands for school, park, and other public purposes, and to apply not more than 20 per cent of the net proceeds from sales of lots in such town sites to aid the construction of schoolhouses and other public buildings in such towns. Provisions to accomplish this have been inserted in H. R. 12440, a bill to authorize the sale and disposition of the land involved in the bill hereunder consideration. A bill has also been

introduced in the House of Representatives (H. R. 6740) making like provisions applicable to all town sites established on Indian reservations and also on the public lands.

If your committee deems it advisable to provide for these matters in this bill, it could be done by inserting after the word "statutes," in line 9, page 7, a semicolon and the following:

"And he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than ten acres in any town site, and to issue patents for such reserved tracts to the municipality legally charged with the care and custody of lands donated for such purposes. And the Secretary of the Interior shall cause not more than twenty per centum of the net proceeds arising from such sales to be set apart and expended under his direction in aiding the construction of schoolhouses or other buildings or improvements in the town sites in which such lots are located."

If this be done, there should be inserted after the word "lands," in line 10, on page 7, the words "less the amount set aside to aid in the construction of schoolhouses or other buildings or improvements."

It has been suggested that there should be inserted in this and like bills a clause to read as follows:

"That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the State or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country."

It has been found that like provisions inserted in other laws have proved of benefit to the Indians and of great assistance to this department in enforcing the laws prohibiting the sale of intoxicants to Indians. The Supreme

Court in the case of *Dick v. United States* (208 U. S., 340) has upheld the validity of such a law.

This department recommends the adoption of the changes herein suggested.

Very respectfully,

R. A. Ballinger, *Secretary*.

Hon. Moses E. Clapp,
Chairman Committee on Indian Affairs,
United States Senate.

[#35D]

(House of Representatives report to accompany S. 183)

[H.R. Rep. No. 1368, 61st Cong. 2d Sess. 1-5 (1910)]

Report No. 1368.

DISPOSITION OF CERTAIN LANDS IN ROSEBUD INDIAN RESERVATION, S. DAK.

May 16, 1910.—Ordered to be printed.

Mr. Burke, of South Dakota, from the committee of conference, submitted the following

CONFERENCE REPORT.

[To accompany S. 183.]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 183) authorizing the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House, and agree to the same with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following:

That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh, south of the White River, and being described and bounded as follows: Beginning at a point on the third guide meridian west where the township line between townships thirty-nine and forty intersects the same, thence north along said guide meridian to the middle of the channel of White River, thence west along the middle of the main channel of White River to the point of intersection with the line dividing the Rosebud and the Pine Ridge Indian reservations, thence south along the boundary line between said reservations to the township line separating townships thirty-nine and forty, thence east along said township line to the place of beginning, except such portions thereof as have been or may be hereafter allotted to Indians or otherwise reserved, and except lands classified as timber lands: Provided, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation: And provided further, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: And provided further, That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other authority, of any religious organization heretofore engaged in mission or school work on said reservation for such lands thereon (not included in any

town-site hereinafter provided for) as have heretofore been set apart to such organization for mission or school purposes.

Sec. 2. That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: Provided, That prior to said proclamation the allotments within the portion of the said Rosebud Reservation to be disposed of as prescribed herein shall have been completed: Provided further, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Philippine insurrection as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes as amended by the Act of March first, nineteen hundred and one, shall not be abridged.

Sec. 3. That before any of the land is disposed of, as hereinafter provided, and before the State of South Dakota shall be permitted to select or locate any lands to which it may be entitled by reason of the loss of sections sixteen or thirty-six, or any portions thereof, by reason of allotments thereof to any Indian or Indians, the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe; and he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than

ten acres in any town-site, and patents shall be issued for the lands so set apart and reserved for school, park, and other public purposes to the municipality legally charged with the care and custody of lands donated for such purposes. The purchase price of all town lots sold in town-sites, as hereinafter provided, shall be paid at such time and in such installments as the Secretary of the Interior may direct, and he shall cause not more than twenty per centum of the net proceeds arising from such sales to be set apart and expended under his direction in the construction of schoolhouses or other public buildings or in improvements within the town-sites in which such lots are located. The net proceeds derived from the sale of such lots and lands within the town-sites as aforesaid, less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements, shall be credited to the Indians, as hereinafter provided.

Sec. 4. That the price of said lands entered as homesteads under the provisions of this Act shall be fixed by appraisement, as herein provided. The President shall appoint a commission, to consist of three persons, to classify, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections sixteen and thirty-six or other lands which may be selected in lieu thereof by the State of South Dakota, in each of said townships, said commission to be constituted as follows: One resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians. That within twenty days after their appointment the said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect, classify, and appraise,

in one hundred and sixty acre tracts each, all of the remaining unallotted lands embraced within that portion of the reservation described in section one of this Act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral and timber lands shall not be appraised: Provided, That timber lands may be classified without regard to acreage: And provided further, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians. That said commissioners shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection, classification, and appraisement of said lands, and necessary expenses, exclusive of subsistence, to be approved by the Secretary of the Interior, such inspection, classification, and appraisement to be completed within six months from the date of organization of said commission.

Sec. 5. That said commission shall be governed by regulations prescribed by the Secretary of the Interior; and after the completion of the classification and appraisement of all of said lands the same shall be subject to the approval of the Secretary of the Interior.

Sec. 6. That the price of said lands disposed of under the homestead laws shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: one-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments, to be paid in two, three, four, five, and six years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease,

and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be again subject to entry under the provisions of the homestead law at the appraised price thereof: And provided, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the appraised price, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: And provided further, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this Act.

Sec. 7. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums to which the said tribe may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization.

Sec. 8. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this Act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose, and in case any of said sections, or parts thereof, are lost to said State by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section one of this Act, to locate other lands not otherwise appropriated, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement: Provided, That in any event not more than two sections shall be granted to the State in any one township, and lands must be selected in lieu of sections sixteen or thirty-six, or both, or any part thereof, within the township in which the loss occurs, except in any township where there may not be two sections of unallotted lands, in which event whatever is required to make two sections may be selected in any adjoining township.

Sec. 9. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of not more than one hundred and twenty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section eight of this Act. And there is hereby appropriated the further sum of thirty-five thousand dollars, or so much thereof as may be necessary, for the purpose of making the appraisement and classification provided for herein: Provided, That the latter appropriation, or any further appropriation here-

after made for the purpose of carrying out the provisions of this Act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribe.

Sec. 10. That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, granted to the State of South Dakota, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

Sec. 11. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: Provided, That nothing in this Act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act.

And the House agree to the same.

Amendment of title.

That the Senate recede from its disagreement to the amendment of the House and agree to the same.

Chas. H. Burke,

P. P. Campbell,

Jno. H. Stephens,

Managers on the part of the House.

Robert J. Gamble,

Moses E. Clapp,

W. E. Purcell,

Managers on the part of the Senate.

[#36]

(Letter of Feb. 25, 1910 to President Taft from
Rosebud Indian Tribal Council.)

ROSEBUD SOUTH DAKOTA

February 25th, 1910

To the Hon. Wm. Taft

President of the United States of America

Kind Sir:

We petition you not to approve of the Gamble bill which has passed the House of Representatives in this last Session of Congress, because we would like as a people, for the betterment of the Sioux Indians to request that several conditions be stipulated regarding the opening of said Country.

No U.S. Indian Inspector, nor any other person or persons as yet has been authorized to explain this bill to us; therefore we would like to see someone that can give us at least a word security regarding the opening of any lands upon what now constitutes our reservation.

Hoping you will consider our petition favorably and that we may have the opportunity to meet a Representative of the United States before you approve of said bills. We remain yours respectfully.

President of Rosebud Indian
Tribal Council

Reubin Quick Bear
Secy., Rosebud Indian Tribal Council
and the People

[#37]

(Legislative history of H.R. 12437 — the House of Representatives companion bill to S. 183 which was enacted May 30, 1910.)

[45 Cong. Rec. 295 (1909-1910)]

Rosebud Reservation: bills for sale and disposition of surplus and unallotted lands in (see bills S. 183: H.R. 12437).

[45 Cong. Rec. 147 (1909-1910)]

H.R. 12437 — To authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Burke of South Dakota; Committee on Indian Affairs 10. — Reported with amendment (H.R. Report 332) 1135. — Laid on the table (see bill S. 2341) 5476.

[45 Cong. Rec. 10 (1909)]

By Mr. Burke of South Dakota: A bill (H.R. 12437) to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect — to the Committee on Indian Affairs.

[45 Cong. Rec. 1135 (1910)]

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several calendars therein named, as follows:

* * *

Mr. Burke of South Dakota, from the Committee on Indian Affairs, to which was referred the bill of the House (H.R. 12437) to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, reported the same with amendment, accompanied by a report (No. 332), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

[45 Cong. Rec. 5476 (1910)]

By unanimous consent the title was amended to read: "An act to authorize the sale and disposition of the surplus and unallotted lands in Bennett County, in the Pine Ridge Indian Reservation, in the State of South Dakota, and making appropriation to carry the same into effect."

On motion of Mr. Burke of South Dakota a motion to reconsider the votes by which the several bills passed to-day was ordered to lie on the table.

Mr. Mann. Mr. Speaker, I suggest to the gentleman from South Dakota that there are two similar House bills — H.R. 12437 and 12440.

Mr. Burke of South Dakota. I was going to make a request that those bills lie on the table. They are similar House bills, and I ask that they lie on the table.

The Speaker. If there be no objection, the bills referred to (H.R. 12437 and 12440) will lie on the table.

There was no objection.

[#37A]

(The House of Representatives report to
accompany H.R. 12437)

[H.R. Rep. No. 332, 61st Cong. 2d Sess. 1-5 (1910)]

Report No. 332.

DISPOSITION OF CERTAIN LANDS IN ROSEBUD RESERVATION, S. DAK.

January 27, 1910.—Committed to the Committee of the
Whole House on the state of the Union and ordered to be
printed.

Mr. Burke, of South Dakota, from the Committee on
Indian Affairs submitted the following:

REPORT.

[To accompany H. R. 12437.]

The Committee on Indian Affairs, to whom was
referred House bill 12437, submit the following report:

The purpose of this bill is to authorize the sale and
disposition of that portion of the surplus and unallotted
lands in the Rosebud Reservation in South Dakota
included in the counties of Mellette and Washabaugh. The
committee recommends the passage of the bill, with the
following amendments:

Page 3, line 8, strike out the words "Pine Ridge" and
insert in lieu thereof the word "Rosebud."

Page 4, line 6, after the word "other" insert the word
"public," so that the line will read, "for school, park, and
other public purposes," etc.

Page 4, line 17, after the word "aforesaid" insert the
following words: "less the amount set aside to aid in the
construction of schoolhouses or other public buildings or
improvements;" so that it will read, "of such lots and
lands within the town sites as aforesaid, less the amount
set aside to aid in the construction of schoolhouses or
other public buildings or improvements, shall be credited
to the Indians, as hereinafter provided."

Page 5, line 1, after the word "thirty-six," insert the
words "or other lands which may be selected in lieu
thereof by the State of South Dakota."

Page 5, line 17, after the word "mineral," insert the
words "and timber," and after the word "appraised"
insert the following words: "*Provided*, That timber land
may be classified and appraised without regard to
acreage: *And provided further*, That any levels classified
as timber lands shall not be disposed of, but shall be
reserved for the use of the Rosebud Indians."

Page 5, line 20, after the word "expenses," insert the
words "exclusive of subsistence."

Page 6, line 15, strike out the words "reoffered for sale
and," and insert in lieu thereof the words "again subject
to," so that it will read "and the lands shall be again
subject to entry under the provisions," etc.

Page 7, line 21, strike out the word "three," and insert
in lieu thereof the word "five."

Page 8, line 18, after the word "thirty-six," insert the
words "or both."

Page 9, line 5, strike out the word "twenty-five," and
insert in lieu thereof the word "thirty-five."

Page 9, lines 14 to 20, strike out all of section 10, and
insert in lieu thereof:

Sec. 10. That the lands allotted, those retained or
reserved, and the surplus land sold, set aside for
town-site purposes, or granted to the State, or

otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

The Rosebud Indian Reservation when set aside as a separate reservation under the Sioux act of 1889 contained something over 3,000,000 acres of land. In 1904 the unused and unallotted portion of the reservation in Gregory County, about 500,000 acres, was disposed of and the Indians received therefrom something more than \$1,500,000. In the Fifty-ninth Congress a law was enacted authorizing the sale of the unused and unallotted lands in that portion of the reservation in Tripp County, comprising about 1,000,000 acres, under a bill substantially in the same form as the bill now under consideration, except that the price of the land was fixed in the law, whereas under this bill the price is to be fixed by appraisement. The proclamation for the disposition of Tripp County lands was not issued until last year, and therefore it was not subject to filing until that time. A very large part of the lands has been entered under the homestead laws, but it is not possible to state just how much will be received from the sale of the lands in Tripp County; it will, however, undoubtedly amount to \$4,000,000.

The area comprised in the present bill is about 800,000 acres and the proceeds from the sale thereof, under the terms of the bill, will probably amount to \$3,000,000. There will still be left a reservation containing about 1,000,000 acres, and as the Indians have all been allotted there is no occasion for continuing a reservation larger than it will be when Mellette County is disposed of.

The bill is carefully safeguarded and provides that Indians who have taken allotments in the area proposed to be disposed of may relinquish such allotments and be

reallotted within the diminished reservation, if they so elect. There is also a provision reserving sections 16 and 36 of the lands in each township for the use of the common schools of the State of South Dakota, to be paid for by the Government of \$2.50 per acre. The granting of these lands to the State is in accordance with the provisions of the enabling act admitting South Dakota into the Union.

Provision is made to reserve lands used for agency, school, and religious purposes.

The bill provides that there shall be appointed a commission consisting of three persons, one a resident citizen of the State of South Dakota, one a person holding tribal relations with the Rosebud Indians, and the other a representative of the Interior Department, the commission to be appointed by the President. The commission are required within six months after their appointment to examine, qualify, and appraise lands that are to be disposed of, and the appraised valuation will be the price to be paid by the settler, who is required to pay one-fifth thereof in advance and the balance in five equal annual installments. The appraisement is subject to the approval of the Secretary of the Interior.

Provision is made directing the Secretary of the Interior to reserve from said lands, such tracts for town-site purposes as in his opinion may be advisable, and the same shall be surveyed into lots and blocks and disposed of under regulations to be prescribed by him, and the proceeds from the sale to go to the credit of the Indians. The Secretary of the Interior is required, however, to reserve not more than 10 acres in each town site for school, park, and other public purposes, and he is authorized to withhold 20 per cent of the net proceeds from the sale of the town site, which is to be expended in aiding in the construction of schoolhouses or other public buildings in the town.

It is the opinion of the department, as expressed in a communication to this committee on H. R. 6740, that this is a wise provision, and that it will probably mean that more money will be received from the sale of town lots net to the Indians than if they received all the proceeds without such provision. The proceeds derived from the sale of the lands and the town lots, except the 20 per cent as above stated, are to be deposited in the Treasury to the credit of the Rosebud Indians with interest thereon at 3 per cent per annum, and shall be subject to appropriation for their support under article 12 of the agreement made with the Sioux Indians dated March 2, 1889.

The communication from the Secretary of the Interior on H. R. 6740, referred to above, dated December 21, 1909, relative to the provision just referred to, states:

Regarding the provision in H. R. bill No. 6740, authorizing the expenditure, under the direction of the Secretary of the Interior, of 20 per cent of the net proceeds derived from the sale of town lots in constructing schoolhouses or other public buildings or improvements, it is evident that such a provision would result in a far more rapid growth, of a substantial nature, of the towns than would be the case if the construction of schools and public buildings were left to the municipal authorities. This provision would make available, almost immediately, funds for the erection of school buildings, and insure that such buildings would be adequate and sanitary.

It is also evident that the value of town lots, within a town site which is assured funds for the erection of substantial and ample schools and other public buildings, would be enhanced by such an assurance, and it is believed that by properly placing these advantages before the public in conducting the sale

of town lots, the net proceeds to be derived therefrom for the benefit of the Indians entitled would be equal to if not greater than would be the case if 20 per cent of the proceeds were not made available for public improvements.

While there does not appear to be any timber upon the lands affected by this bill, the committee thought it advisable to provide that in case there is any timber land it shall not be disposed of, but shall be reserved for the use of the Indians.

The amendment proposed and adopted for section 10 of the bill is in accordance with recent precedents and is a wise provision, as it is generally recognized that it is of the greatest importance that intoxicating liquors be kept as far as possible from the Indian, and that a provision such as this is not only for their best interests, but will be of equal benefit to the people who will settle and develop the area described in the first section of the bill.

The bill is drafted in accordance with negotiations conducted by the well-known Indian inspector, Major McLaughlin, who visited the reservation and negotiated with the Indians, and they are satisfied to have the unallotted lands described herein disposed of.

The money appropriated by the bill is all reimbursable, and immediately after the opening takes place the same will be repaid into the Treasury from proceeds from disposition of the lands.

The Secretary of the Interior in reporting upon a bill in the Senate (S. 183) substantially in the same form as this bill, reported as follows (see S. Rept. No. 68):

Department of the Interior,
Washington, January 13, 1910.

Sir: The department has received, by your reference, for recommendation and report a copy of Senate bill 183, authorizing the sale and disposition of a portion of the surplus unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota.

Inspector McLaughlin submitted this matter to the Indians, who, while they were opposed to opening all the lands described in the bill, indicated a disposition to acquiesce in the opening of a part of the lands of their reservation lying north of the tenth standard parallel. In connection with this, however, the Indians insisted that they should be paid at the rate of \$2.50 per acre for the lands granted to the State of South Dakota, and expressed a strong desire that the timber on the part of the reservation to be opened be reserved for the Indians. It is believed these requests of the Indians are just and reasonable and should be complied with.

It is recommended that the description of the lands to be opened be changed to read as follows:

"Commencing at a point on the western boundary of the Rosebud Indian Reservation, in the State of South Dakota, where it intersects the township line between townships 39 and 40 north, running thence north along said boundary line to a point in the center of the main channel of the White River; thence easterly along the center of the main channel of said White River to a point where the range line between ranges 24 and 25, west of the sixth principal meridian, intersects the same; thence south on said range line between ranges 24 and 25 west to a point where it is intersected by the township line between townships 39 and 40 north; thence west along said township line between townships 39 and 40 north to the place of beginning."

The words "Indian Bureau," in line 19, on page 4, should be stricken out and the words "Interior Department" inserted in lieu thereof. There should be inserted after the word "empowered," in line 24 of page 4, the words "to select such clerks and assistants at such compensation." The word "each," in line 2, page 5, should be stricken out and the words "that portion of said" be inserted.

If the timber land could be appraised only in 160-acre tracts, it would perhaps be found necessary to include in such classification much valuable agricultural land in order to embrace all the timber. To meet this condition it is suggested that there be inserted after the word "mineral," in line 8, on page 5, the words "and timber," and after the word "appraised," in said line 8, there be inserted the following: "*Provided*, That timber lands shall be classified without regard to acreage: *And provided further*, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians."

It is believed that a compensation of \$10 per day and the necessary expenses is ample, and for the purpose of certainty in this regard, it is suggested that there be inserted after the word "expenses," in line 11, page 5, the words "exclusive of subsistence."

It is entirely just and reasonable that the Indians should be paid for the lands granted to the State of South Dakota at the rate of \$2.50 per acre, and it is therefore suggested that the bill be amended by striking out the words "one dollar and twenty-five cents" in line 2, on page 8, and inserting in lieu thereof the words "two dollars and fifty cents." Should the bill be amended in this respect it would be necessary to increase the appropriation provided for in section 8 for lands granted to the State, by striking out "sixty-five" in line 16, on page 8, and inserting in lieu thereof "one hundred and twenty-five."

It is found that the work of allotting, classifying, and appraising Indian lands costs, approximately, \$1,000 a township. Since there are about 36 townships within the part of the Rosebud Reservation proposed to be opened by the bill, the department believes that the sum of \$35,000 will be needed for this work, and therefore suggests that "twenty-five" in line 20, on page 8, be stricken out and "thirty-five" be inserted in lieu thereof.

There are two other matters which the department deems it appropriate to bring to the attention of your committee in connection with this bill. It has been suggested it would be good policy to set aside within town sites established on Indian reservations lands for school, park, and other public purposes, and to apply not more than 20 per cent of the net proceeds from sales of lots in such town sites to aid the construction of schoolhouses and other public buildings in such towns. Provisions to accomplish this have been inserted in H. R. 12440, a bill to authorize the sale and disposition of the land involved in the bill here under consideration. A bill has also been introduced in the House of Representatives (H. R. 6740) making like provisions applicable to all town sites established on Indian reservations and also on the public lands.

If your committee deems it advisable to provide for these matters in this bill, it could be done by inserting after the word "statutes," in line 9, page 7, a semicolon, and the following:

"And he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than ten acres in any town site, and to issue patents for such reserved tracts to the municipality legally charged with the care and custody of lands donated for such purposes. And the Secretary of the Interior shall cause not more than twenty per centum of the net proceeds

arising from such sales to be set apart and expended under his direction in aiding the construction of schoolhouses or other buildings or improvements in the town sites in which such lots are located."

It has been suggested that there should be inserted in this and like bills a clause to read as follows:

"That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the State or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country."

It has been found that like provisions inserted in other laws have proved of benefit to the Indians and of great assistance to this department in enforcing the laws prohibiting the sale of intoxicants to Indians. The Supreme Court in the case of *Dick v. United States* (208 U. S., 340) has upheld the validity of such a law.

This department recommends the adoption of the changes herein suggested.

Very respectfully,

R. A. Ballinger,
Secretary.

Hon. Moses E. Clapp,
Chairman Committee on Indian Affairs,
United States Senate.

[#38]

(Letter of Jan. 13, 1910 to Congressman Burke
from the Secretary of the Interior concerning H.R. 12437)

Subject:

H.R. Bill No. 12437

Rosebud Reservation.

98358 - '09

Jan. 13, 1910

Hon. Charles H. Burke,
Chairman Committee on Indian Affairs,
House of Representatives.

Sir:

The Department is in receipt of your letter of December 8, enclosing for report and recommendation a copy of H.R. Bill No. 12437, Sixty-first Congress, Second Session, to authorize the sale and disposition of a portion of the surplus lands in the Rosebud Indian Reservation, South Dakota.

It is suggested that the first proviso in section two be changed to read as follows:

Provided, That prior to said proclamation the Secretary of the Interior shall cause allotments to be made to every man, woman, and child belonging to or holding tribal relations in said reservation, who have not heretofore received the allotments to which they are entitled under provisions of existing laws.

The provisions of section three authorizing the setting apart for school, park, and other public purposes not more than ten acres in any townsite, and providing that the Secretary of the Interior shall cause not more than twenty per centum of the net proceeds arising from the sales of town lots to be expended in the construction of school houses, or other public buildings, or in improve-

ments, present new features in legislation of this character. This Department is not inclined to interpose any objection to the adoption of such a plan. It is proposed by H.R. No. 6740, to enact general legislation of this character applicable to all townsites, both in Indian reservations and on the public domain. If the bill should be enacted into a law, it would, perhaps, be unnecessary to include the provisions in this bill. If this provision remains there should be inserted after the word "afore-said" in line seventeen, page four, the words "less the amount set aside to aid in the construction of school houses or other buildings or improvements."

The Department is informed that much of the timber on this part of the Rosebud Reservation is in small groves, and that to appraise such lands in tracts of one hundred and sixty acres, would be to include with the timber lands much valuable agricultural land. To meet this condition it is suggested that there be inserted after the word "mineral" in line seventeen, page five, the words "and timber" and after the word "appraised" in line seventeen, page 5, the following - "Provided that timber land may be classified and appraised without regard to acreage and provided further that any lands classified as timber lands shall not be disposed of but shall be reserved for the use of the Rosebud Indians."

It is believed that a salary of ten dollars per day and the payment of all necessary expenses exclusive of subsistence affords adequate compensation for the work of classifying and appraising the surplus lands, and it is therefore recommended that the words "exclusive of subsistence" be inserted after the word "expenses" in line twenty, page five.

It has been found that the cost of classifying and appraising Indian lands approximates one thousand dollars for each township. Inasmuch as there are thirty-six

townships within the portion of the Rosebud Reservation proposed to be opened, "twenty-five" in line five, on page nine, should be stricken out and there should be inserted in lieu thereof "thirty-five."

Section ten provides punishment by imprisonment and fine, or both, for every person who shall sell or give away intoxicating liquors upon any of the lands allotted, reserved, or disposed of within this tract. The Supreme Court of the United States in [Dick v. United States] (208 U.S., 340), sustained a provision prohibiting the introduction of intoxicating liquors upon lands ceded by Indians, for a period of twenty-five years, but emphasized strongly the fact that the provision was for a limited period reasonable in duration. The Department doubts very much the advisability of attempting to impose upon ceded lands a perpetual prohibition against the sale of intoxicants, and also doubts the advisability of prescribing punishment for the sale of liquors in violation of the law. The degree of punishment should be uniform, and, therefore, should be established by reference to the Revised Statutes of the United States relating to this subject. If a provision of this character is to be retained, it should be in substance in the following language:

That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for townsite purposes, or granted to the State, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

Very respectfully,
(Signed) R.A. Ballinger
Secretary

BCS-12

[#39]

(Legislative history of S. 8918, a bill for the sale of surplus lands in Todd & Bennett Counties of the Rosebud Reservation.)

[46 Cong. Rec. 147 (1910-1911)]

Rosebud Reservation: bill for sale of surplus and unallotted lands in (see bill S. 8918).

[45 Cong. Rec. 14 (1910-1911)]

S. 8918 — To Authorize the sale and disposition of a portion of the surplus and unallotted lands in Todd and Bennett Counties, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Gamble; Committee on Indian Affairs, 55.

[45 Cong. Rec. 55 (1910)]

A bill (S. 8918) to authorize the sale and disposition of a portion of the surplus and unallotted lands in Todd and Bennett Counties, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect; to the Committee on Indian Affairs.

[#40]

(Letter of November 12, 1910 to Mr. Schofield from the Second Assistant Commissioner of Indian Affairs.)

Land-Allotments

87601-1910

W A M

Surplus lands,
Rosebud Reservation

Nov. 19, 1910

Mr. C. Schofield,
Sioux Falls, South Dakota

Sir:

Your letter of October 22, 1910, to the President regarding the opening of a part of the Rosebud Reservation to settlement, has been referred to this Office for consideration.

In response you are informed that the opening of a part of the Rosebud Reservation to settlement was with the general consent of the Indians. The Act of May 30, 1910 (35 Stat. L., 448), authorizing this opening, provides for allotments in the opened territory to every man, woman, and child who has not heretofore received an allotment; and also for payment to the Indians for the surplus lands disposed of to homestead entrymen.

The diminished reservation — that is, the lands remaining after the allotments and sale of lands referred to, will consist of about 40 townships, which may be used to provide allotments until such time as there are no unallotted lands therein.

Very respectfully,
(Signed) C.F. Henke,
Second Assistant Commissioner

11-WJ-5

Sioux Falls, S.D.
Oct. 22, 1910

To the President

Dear Friend

Hearing that 800,000 acres of the Rosebud Indian Reservation is to be opened for settlement I would ask you as an honorable Christian gentleman to put yourself on record in opposition to any such iniquity. An Indian reservation is a reservation sacred to the Indians and to coolly turn around and announce as an opening for White settlement of such land is shameless robbery to any mind, and I am a white person too.

Even though obliged to do as Congress directs a show of resistance would be becoming I would suggest to such atrocious and impudent measures.

Yours,
C. Schofield

[#41]

(Series of letters between Mr. M.R. Derig and the Second Assistant Commissioner of Indian Affairs concerning the sale of surplus lands in Todd County in the Rosebud Reservation.)

Land-Allotments

8613-1911

J T R

Opening Rosebud.

Feb. 8, 1911

Mr. Matthew R. Derig,
Carter, South Dakota

Sir:

The Office has received your letter of January 25, 1911, regarding the opening of Todd County, South Dakota, within the Rosebud Indian Reservation.

A bill was introduced in the Senate on December 7, 1910 (Senate 8918), providing for the disposal of the surplus lands within Todd County, South Dakota, in the Rosebud Reservation but as far as the Office has been advised this bill was not referred to the Department for consideration and it is not believed that action will be had on the bill by the Congress at its present session.

Respectfully,
(Signed) C.F. Hauke
Second Assistant Commissioner

2-VAR-6

Department of the Interior,
United States Indian Service
Rosebud Reservation
P.O., Carter, S.D.

Jan. 25, 1911

Hon. R. G. Valentine,
Commissioner of Indian Affairs,
Washington, D.C.

Dear Sir —

I send herewith a letter expressing a portion of my views in objection to the Bill introduced for the opening of Todd County, S.D. If you would be pleased to do so I would like that the letter be placed with the Senate Committee on Indian Affairs.

Believing that first-hand information on the policy of such Bill should be offered, I am very respectfully

Matthew R. Derig
Teacher

Department of the Interior
United States Indian Service
Rosebud Reservation
Carter, S.D.

January 23rd, 1911

Your attention is respectfully invited to the general policy of the bill introduced in the Senate having for its purpose the opening to white settlement and purchase of unallotted lands in Todd Co. South Dakota.

This bill if passed will deprive the Brule Sioux Indians of practically their last vestige of free range for cattle, stock raising being their normal means of supporting themselves and their most natural vocation, as was the case with the white race in its economic advance from the hunting and fishing stage.

Advocates of the bill are certainly misinformed if they assume that these Indians are so advanced and conditioned as to be able to make their own living or a fair fraction of it by cultivating the land. Attempts have been made by the Government, at some times more energetic than at others, during some twenty years past to induce these Indians to do some farming and gardening. There are grave doubts if during any one year a tenth part of their entire wants have been supplied from this source. Also the well intentioned system of education which has been carried on for a somewhat longer period, and which includes a fair part of the time, instruction in industrial training, seems to fall short of equipping the Indian youth for the agricultural stage. This is probably because of their traditional attitude towards labor and continuous application, lack of thrift and meager returns from attempts made. If observing the white man's method is relied on to stimulate the Indians' farming the occasional settler on recently purchased heirship lands and those in surrounding counties, should serve the purpose.

Though with the apparently fair method of purchase and settlement provided in the bill, the white settler, if history repeats itself, will become "disillusioned." He will have a dozen disadvantages compared with the homesteader of recently opened counties where it is said that only one third of the original filers "stay it out" for a full five year period. It is known that in belts of this state east of the Missouri River thousands of thrifty and industrious white families who had centuries of farming and civilization bred into them, were during periods of "bad years" forced to give up their lands.

Mostly because of a succession of "good years" and partly because of improved methods and machinery together with advanced prices of farm products, a land boom has prevailed around this reserve. The result is a

hunger for this remnant as farm land, and without thought even that the un-born Indian child must get along without a parcel of land though he will need it far more than those now living.

These Indians have been living for a generation almost wholly on rations and work supplied by the Government, together with the proceeds of the sale of ceded lands, of heirship lands and the occasional sale of or slaughter of cattle. Their aggregate area of land is now reduced to a very small fraction of what it was a generation ago.

Assuming that the next step in this assimilating process is to merge these Indians and others similarly situated into the body politic of the state — the Government thus shifting the "White man's burden" — what of the outlook?

For the welfare of Rosebud Indians (some 5000 persons) the Government expends annually for management of affairs, subsistence, civilization, including education — the largest item policing, custodianship etc. a sum probably well above \$125,000. Without scarcely increasing their own permanent resources, those people expend proceeds from ceded and heirship lands, etc., probably \$175,000. These totals seem to indicate a "consumption" above production of some \$300,000 or if grouped into families of five, say \$300 per family. Expenditures from ceded lands must by its exhaustion soon cease. A state might be able to reduce the other items considerably but would have in hand a long list of non-competents.

Very respectfully
Matthew R. Derig
Teacher

I offer as reference if you desire
Hon. Robt. M. LaFollette
Hon. Irvin L. Lenroot
8 years U.S. Indian schools — Rosebud Res.

[#42]

(Minutes of Council of November 1, 1911)

MINUTES OF COUNCIL HELD BY JAMES MC-
LAUGHLIN, INSPECTOR DEPARTMENT OF THE IN-
TERIOR, WITH THE INDIANS OF ROSEBUD
AGENCY, SOUTH DAKOTA, IN REFERENCE TO THE
SALE AND DISPOSITION OF THE SURPLUS AND
UNALLOTTED LANDS OF THE ROSEBUD RESER-
VATION, AS CONTEMPLATED BY SENATE BILL
110, 62nd CONGRESS, 1st SESSION.

-----o0o-----

Council convened at Rosebud Agency, S.D., at 3-35
P.M., November 1, 1911, with Superintendent J.B.
Woods and 85 male adult Indians of the reservation in
attendance, with Louis Roubidoux, Louis Bordeaux and
Frank Jannis, Interpreters.

-----o-----

INSPECTOR MCLAUGHLIN: My friends, having
terminated our council relative to allotments to certain
Ponca Indians from the surplus and unallotted lands of
your reservation, I now submit to you another Bill which
was introduced in Congress April 6th last, providing for
opening the remainder of the surplus lands of your
reservation. This is the Bill referred to which I will now
read and explain to you.

Inspector McLaughlin here read and explained to the
Indians, Senate Bill 110, 62nd Congress, 1st Session, and
then said:

My friends: This Bill is similar in every respect to the
Act opening your Mellette County lands, except as to
boundaries, and having now explained to you the
provisions of this Bill, I am ready to hear from you
regarding same.

Every statement made by me and by your speakers in
this council is noted in shorthand by the stenographer
here, which shorthand notes will be transcribed in
typewriting and go forward to the Secretary with my
report, and you having been discussing this question
among yourselves since my arrival here last Saturday, you
are doubtless prepared to express yourselves understand-
ingly as to this proposed legislation, and I now desire [2]
to hear from you regarding the proposed opening of the
remainder of your surplus lands.

REUBEN QUICK BEAR: My friend, you have stated
that you want to open up Todd County and in that
particular I wish to say something. In this connection I
am going to prepare something. You tell the Indians to
wear Citizens' clothes. I travel among the white people
and see some of them and I see the way they live. I met a
man who had five cents. He took it out. I am going to
throw this up he said, heads I win, tails you lose. The way
you read that bill is the same thing. One way or another
we are going to loose the land. Anyway we would be the
losers and get very small money for the land. That is the
way I have said. Every time you come here we give you
the land, now we want to keep the land for the children
to come. In Tripp County we made in that treaty that
our children are entitled to some land. That is the way we
have said. We of the Black Pipe District are not going to
dispose of the land. We are not going to sell any land or
give any away, now we are going to keep the surplus land
for the generations to come. We are going to hold it fifty
years. We are going to get a patent for the land, about a
fifty year patent. Now I will tell you why we don't want
to sell any land or dispose of it. When the Lower Brules
first come over you wanted some land for them, and you
bought the bill out here and read it to us. We liked the
program and we all agreed to it. That is the time you said

that we are going to give our wives half a section of the land issued to the husbands and that they would get the benefits also, provided in Section 17 of the Act of March 2, 1889. When a young man come to be eighteen years of [3] age he would get the property also. In that way according to that bill we all signed it. Of course that was not the law but the Great Father simply told us so we signed the agreement. And in Gregory County again, the payment that was to be made we were all satisfied with, and therefore we all signed the agreement. You said they would pay out everything, but now they tie up the childrens money. And in Tripp County again. They made a treaty for that. They have said that before, but we have not received that payment yet. And in Mellette County again. We were going to sell the land, but they sent three men to see about timber and gold and iron and coal, and they selected three men to appraise the land for us. Now they don't state in the Act how we are going to get the money in that treaty and I don't know how we are going to get that money. We have no way to get that money. We want them to make an agreement with us as to how we are going to get that money. We want the Agent to be authorized to sign with us for the proceeds of Mellette County. That is one of the treaties that you made. Now we have a small reservation and we don't want to sell it or dispose of it in any form. We are recognized as Americans, people of the United States. Senator Gamble and other officials are after our lands all the time, but the money we have not received from the treaties that we have made I hope you will help us get it. Of course we are going to select a new President and Members of Congress next fall and if they will help us in that way we will help them out in our vote, those who tell us they will help us get the money. We are poor people and how are weing to help them with our votes if they don't [4] help us. My

friend, the Black Pipe District Indians object to the two bills you have presented to us today.

HOLLOW HORN BEAR: On the subject you have presented I will say something about it mys elf. I don't know how to farm very well and something happened to me which I will tell you about. I planted some potatoes my self and when I dug them up, the ground was frozen and all I got was peelings. The best substance of the potatoes was gone. I don't want to do that again. This potato crop was the same as Mellette County. Now you show me another proposition, this new one, and you don't show me any point how I am to get my money and how I am going to spend it. Anything that way pleases me. I am willing to sell but I have found nothing worth considering. I have been a party to all the treaties that have been made on this reservation. Whenever there is any treaty going on and I can see, where I can get money out of it, then I talk about it and accept it. That Ponca proposition I know will be all right and I know I can take that money and live, and my people and myself will have something to eat. On the other matter, The Todd County business, I wont make any proposition at all. I have been thinking that way when we had a large territory, and the Great Father has taken some of it off right along. I have thought that way and I have knelt down to them and asked them not to make me a prisoner. I used those words in Tripp County treaty. I live right here, born right here, but I am not here as a prisoner. The 1868 Treaty, a man, my father, made that treaty. I have not seen you fulfill that treaty of 1868 yet. There is some good laws in that treaty but I am not going to tell you because you know it all yourself. Here on [5] the reservation I don't make any big trouble at all. That is trouble about treaties. According to all the Agents, whenever a man has many friends he wants to adhere to the laws and in that way

retain their friendship. They used to try to blame us for what happened in Montana, they tried to blame us but we did not do it. What I mean to say is this. I have not seen anything come out of all the laws made on the reservation yet. Whatever land is left in Todd County, leave it alone, we want it ourselves. It appears that whatever suits the United States they put it in the agreement and never what we want. We have not seen anything that would benefit us Rosebud Indians in this Todd County treaty. But concurring in the provisions of the bill, which you have presented, would be like throwing our surplus land away. You can't do anything toward it therefore you leave it alone. In the other proposition about the Poncas, that is the kind of agreement I would make for my people. If the people beat me in that it is all the same. If I win I would have a little something to live on from it. My reasons for being willing to admit the Poncas was conditioned upon the fact that it would prevent the opening of the rest of the reservation lands, provided the Poncas would not be entitled to, nor receive any of our treaty funds. This is all I will say. We all love and respect you and the Indians do not blame you for anything that has happened in past legislation.

HIGH PIPE: I am going to say only two words to you my friend. Whatever surplus land we have got we don't want to give it away. You know us all here. We don't want to give it away.

[6] TODD SMITH: Whatever I say here about the proposition is all right and Senator Gamble will know it. Tell him that he wants to buy Todd County but Todd (Smith) won't sell it. Tell him that we have only a little land left and we expect children to be born and we want this land. You tell him if he lets Todd County alone, there are lots of voters if he want to be Senator again, and if he will quit Todd County we will vote for him. If

he don't do it, we will vote the other way and throw him away, and select a better man to take Senator Gamble's place.

JAMES STANDS FOR THEM: I am going to say two words to you. The people up in Black Pipe District tells me to come. The Poncas want to come on this reservation and I am opposed to it. Before when you came here I always helped you and aided you in your business. I just thought now that we never will live good. Now my friend, you know we always help you and I would now be willing to help you but I cannot help you. My friend, from this on, you go home without land, and I opposed to opening Todd County.

LOUIS BORDEAUX: My friend, you have come here again on account of the Todd County land and we are very glad to receive you as our friend. Before when you come for land I was always glad to help you because you are a friend of mine. We have given you three good counties of land. And this last county we have, there is very little good land left in it, but a large lot of Sand hills. Therefore we want to preserve this land for ourselves and we pray you for this. The people are still increasing and we want to save this land for them. We have given you three counties. This is our last chance and for the benefit of the people in the future we want you to help us to keep [7] it. That is the wish of my people and they told me to tell you that is the wishes of all. You tell my friend Senator Gamble, and he is a friend of mine. He is always getting up some bill on account of our land and then you are given the bills to carry over here to force through for them. We have got very little land left now. My friend, have pity on us and aid us to keep this land for our children. We wish to preserve this land, my friend, and every man here who has made a speech in opposition to it meant what he said. We have a great deal of trouble in

getting our payments from the proceeds of the lands already purchased from us. Therefore my people are afraid. They don't care about disposing of the little land they have left. My friend, you know all the people are represented here, and they represent what the people want who were left at home. I am an Indian and belong to the tribe and I can hear what they all say that they don't want to spare any more of their Todd County land. That is all I have to say and I shake hands with you for all the people with a good heart.

EUGENE LITTLE, CHAIRMAN OF THE ROSEBUD INDIAN BUSINESS COMMITTEE: When Mellette County was opened I blamed you a little about that. There used to be three-fourth consent of the people required to open our lands and anything regarding Indian matters. Only a few consented at the time they opened Mellette County, and I don't believe that is right. I know you are a Catholic. Whatever you do you do straight, because you are a Catholic you must live up to your faith and be straight. In the second place we don't want this Todd County opened up without three-fourths consent of the people. Whatever surplus land we have [8] in Todd County we want our future children to have it. The other speakers mentioned it and they are right. If you take this land what will our children that may be born do? How will they live? If you are going to take this land you might just as well send men here, who can cut off people heads, to cut off all the children's heads, for taking the land from them will be just the same. You must have pity on us because you are our neighbor. Don't take this land away without three-fourths consent.

CLARENCE WHITE THUNDER: Whenever we do anything that is not accomplished when we can do something else afterwards. When they fix the money question up all right then you can come back and talk to

us again. I will say that we will hold on to Todd County for fifty years. The next time the Great Father sends his message to Congress tell him to not mention Todd County. We will hold on to Todd County for fifty years.

CHARLES TACKETT: My friend, you have been here several times. You have mentioned about several counties. What I want to say the speakers have already said, but I want to say some little things. They speak about our surplus land a great deal. When the Government sent people here to allot the land, I was with them two years. I was the first person who took an allotment on this reservation. There were some people who were ready for allotment in certain places where they selected land, where the land was not surveyed, and whenever the survey was made they took their allotment and went home. I remember an Indian went to White River and the snow was so deep they did not allot any land. Some of them in that way died and never got any land. What are you going to do for them. Those who died before getting any land although they [9] had selected allotments. They died before the Government and Great Father got ready to give them the land. They died and did not get any land. That was under the Crook treaty, and all those who died during the allotment did not get any land and relatives are sorry about it and so am I. If you were going to investigate this matter you might find six or seven hundred who are entitled to land, who died while the allotment was going on. And I ask you to help us and look into it and see about those who are entitled to allotments. That is all I have to say and I want you to have pity on the people.

INSPECTOR MCLAUGHLIN: My friends: I have heard your speeches on the proposition which I submitted in reference to the opening of the surplus lands in Todd County. Notwithstanding that your speeches have

been in opposition to the opening, I must congratulate you upon the manner in which the council has been conducted. It has been made plain to me here today that the sentiment of the Indians of the reservation is very much opposed to the opening of the surplus lands in Todd County at the present time. All that you have said and all that I have said will appear in the minutes of our council which I will forward with my report so that the Department officials may know exactly how you feel in relation to the matter. The minutes, showing what has been said here, will be transmitted by the Secretary of the Interior to the Committees of Congress, and everything appearing in the council minutes will be considered in connection with the proposition of opening your surplus lands to settlement under the provisions of the bill which I have explained to you today. But bear in mind, my [10] friends, that the fact of your refusing to accept the provisions of this bill does not prevent the opening of your lands if Congress so determines. As I have told you before in my councils with you, a decision of the Supreme Court on January 5, 1903, determined that Congress has the power to legislate for the opening of Indian Reservation lands without consulting the occupants. But neither the Department officials or the members of Congress wish to force upon Indians, legislation of that kind arbitrarily, but always desire to have the matter submitted to the Indians and explained thoroughly to them before any final action is taken by Congress on bills of this character. My friends, you have been very reasonable in meeting the wishes of the Department and of Congress in the past, in the different propositions which I have submitted to you, and you have met the wishes of Congress so commendably in the past I believe such fact will be taken into consideration when this matter is being further considered. I fully

appreciate your feelings on this matter, knowing that your reservation, which was a very large one a few years ago, is now reduced to the limits of Todd County, and I can understand very well how you feel; that you are very desirous and anxious to retain this County intact. But should Congress conclude to enact legislation opening it, you must not blame me, for I will place the matter before the Department just as you have placed it before me today. This is all I deem necessary to say at this time, and I am glad to have met you people today and sorry that the weather has been so inclement and the distance so great as to have prevented many others from being present at this council. I feel very friendly toward you people and very much at home among you, because I regard the Indians of the [11] Rosebud Reservation as personal friends of mine, and one and all, and having placed this matter before you as plain as it was possible to present it, and believing that each and all of you understand the question very clearly, your non-concurrence, as voiced by your speakers, will be reported by me to the Department, and I shake hands with each and all of you and this council is now adjourned.

Council adjourned, sine die, at five thirty, P.M.

I hereby certify that the foregoing eleven typewritten pages is a transcript of shorthand notes taken by me in Council held by James McLaughlin, Inspector Department of the Interior, with the Indians of the Rosebud Reservation, South Dakota, on November 1, 1911.

/s/
Stenographer.

Rosebud, South Dakota,
November 3, 1911.

[#43]

(An act extending the time for payment by homesteaders on land in what was formerly a part of the Rosebud Indian Reservation)

[Act of Aug. 17, 1911 Ch. 22, Stat. 21]

Chap. 22. — An Act Extending the time of payment to certain homesteaders in the Rosebud Indian Reservation, in the State of South Dakota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who has heretofore made a homestead entry for land in what was formerly a part of the Rosebud Indian Reservation, in the State of South Dakota, authorized by the Act approved March second, nineteen hundred and seven, may apply to the register and receiver of the land office in the district in which the land is located, for an extension of time within which to make payment of the amount that is about to become due, and upon the payment of interest for one year in advance, at five per centum per annum upon the amount due, and payment so extended may annually thereafter be extended for a period of one year in the same manner: *Provided*, That the last payment and all other payments must be made within a period not exceeding one year after the last payment is due; that all moneys paid for interest as herein provided shall be deposited in the Treasury to the credit of the Indians as a part of the proceeds received for the lands.

Sec. 2. That failure to make any payment that may be due, unless the same be extended, or to make any extended payment at or before the time to which such payment has been extended as herein provided, will forfeit the entry and the same shall be canceled, and any and all payments theretofore made shall be forfeited.

Sec. 3. That nothing herein contained shall affect any valid adverse claim initiated prior to the passage of this Act.

Approved, August 17, 1911.

[#44]

(Legislative history of S110 — a bill for the sale of surplus land in Todd County in the Rosebud Reservation.)

[49 Cong. Rec. 109 (1913)]

Rosebud Reservation: bills for sale of surplus and unallotted lands in (see bills S. 110*; H.R. 28606;

[49 Cong. Rec. 3 (1913)]

S.110 — To authorize the sale and disposition of the surplus and unallotted lands in Todd County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Reported with amendment (S. Rept. 1106), 2209. — Amended and Passed Senate, 4210.

[49 Cong. Rec. 2209 (1913)]

Mr. Gamble, from the Committee on Indian Affairs, to which was referred the bill (S. 110) to authorize the sale and disposition of a portion of the surplus and unallotted lands in Todd and Bennett Counties, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, reported it with amendments and submitted a report (No. 1166) thereon.

[49 Cong. Rec. 4210 (1913)]

Rosebud Indian Reservation

Mr. Gamble. The junior Senator from Georgia withdraws his objection to Order of Business 1033, Senate bill 110, and I would be very glad to have it disposed of.

Mr. Bristow. That is a long bill, and a Senate bill. Why should we waste time on it?

Mr. Gamble. I should like to have it disposed of. It is in the usual form.

Mr. Bristow. We have been kept here a long time.

Mr. Smith of Georgia. It can be read very rapidly.

Mr. Gamble. It can be read rapidly because it is in the usual form.

The President pro tempore. The most of the bill has been read.

Mr. Gamble. I think the bill has been largely read.

The bill (S. 110) to authorize the sale and disposition of a portion of the surplus and unallotted lands in Todd and Bennett Counties, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Indian Affairs with amendments.

The first amendment of the Committee on Indian Affairs was, in section 1, page 2, line 15, after the word "Provided," to strike out "That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation: *And provided further,*" so as to read:

That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell

and dispose of all that portion of the Rosebud Indian Reservation in the State of South Dakota lying and being within the counties of Todd and Bennett, described as follows, to wit: Commencing a point on the boundary line between the States of South Dakota and Nebraska where the third guide meridian west intersects the same; thence north on said guide meridian to a point where the same intersects the township line between townships 39 and 40; thence west on said township line to a point where the same intersects the boundary line between the Rosebud and Pine Ridge Indian Reservations; thence south on said boundary line between said reservations to a point where the same intersects the State line between the States of South Dakota and Nebraska; thence east along said State line to the place of beginning, except such portions thereof as have been or may be hereafter allotted to Indians or otherwise reserved and except lands classified as timber lands; *Provided*, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: *And provided further*, That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other authority, of any religious organization heretofore engaged in mission or school work on said reservation for such lands thereon (not included in any town site hereinafter provided for) as have heretofore been set apart to such organization for mission or school purposes.

The amendment was agreed to.

The next amendment was, in section 3, page 4, line 11, after the word "prescribe," to strike out "and he is here-

by authorized to set apart and reserve for school, park, and other public purposes not more than 10 acres in any town site, and patents shall be issued by the Secretary of the Interior for the lands so set apart and reserved for school, park, and other public purposes to the municipality legally charged with the care and custody of lands donated for such purposes, upon receiving satisfactory evidence that said towns have been duly incorporated"; in line 22, after the word "direct," to strike out ", and he shall cause not more than 20 per cent of the net proceeds arising from such sales to be set apart and expended under his direction in the construction of schoolhouses or other public buildings or in improvements within the town sites in which such lots are located"; and on page 5, line 3, after the word "aforesaid," to strike out "less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements," so as to make the section read:

Sec. 3. That before any of the land is disposed of, as hereinafter provided, and before the State of South Dakota shall be permitted to select or locate any lands to which it may be entitled by reason of the loss of section 16 or 36, or any portion thereof, by reason of allotments thereof to any Indian or Indians, the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe. The purchase price of all town lots sold in town sites, as hereinafter provided, shall be paid at such time and in such installments as the Secretary of the Interior may direct. The net proceeds derived from the sale of such lots and lands within the town sites as aforesaid shall be credited to the Indians, as hereinafter provided.

The amendment was agreed to.

The next amendment was, in section 7, page 8, line 11, after the word "Indians," to strike out "shall be at all times subject to appropriation by Congress for their education, support, and civilization" and insert "including the interest thereon, may be expended for their benefit or distributed per capita, in the discretion of the Secretary of the Interior," so as to make the section read:

Sec. 7. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums to which the said tribe may be entitled, which shall draw interest at 3 per cent per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians, including the interest thereon, may be expended for their benefit or distributed per capita, in the discretion of the Secretary of the Interior.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to authorize the sale and disposition of the surplus and unallotted lands in Todd County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect."

[#44A]

(Senate report to accompany S. 110)

[S. Rep. No. 1166, 62d Cong. 3d Sess. 1-5 (1913)]

Report No. 1166.

SALE OF SURPLUS LANDS IN TODD COUNTY IN
THE ROSEBUD INDIAN RESERVATION, S. DAK.

January 29, 1913.—Ordered to be printed.

Mr. Gamble, from the Committee on Indian Affairs,
submitted the following

REPORT.

[To accompany S. 110.]

The Committee on Indian Affairs, to whom was referred the bill (S. 110) to authorize the sale and disposition of a portion of the surplus and unallotted lands in Todd and Bennett Counties, in the Rosebud Indian Agency, in the State of South Dakota, and making appropriation and provision to carry the same into effect, having had the same under consideration, beg leave to recommend that the said bill do pass, with the following amendments:

Amend the title of the bill to read: "A bill to authorize the sale and disposition of the surplus and unallotted lands in Todd County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect."

Page 2, line 10, after the word "Provided" in said line, strike out the word "That" and down to and including the word "further" in line 15.

Page 4, line 6, strike out all in said line after the word "prescribed" and down to and including the word "incorporated" in line 14.

Page 4, line 17, after the word "direct," strike out all the remainder of said line 17 and lines 18, 19, 20, and 21.

Page 4, line 23, after the word "aforesaid," in line 23, strike out the remainder of said line and down to and including the word "improvements" in line 25.

Page 8, lines 5 and 6, strike out lines 5 and 6 and insert in lieu thereof the following:

including the interest thereon, may be expended for their benefit or distributed per capita, in the discretion of the Secretary of the Interior.

Page 8, line 24, strike out the word "twenty-five" and insert in lieu thereof "thirty."

As shown by the report of the Secretary herewith submitted, the area proposed to be opened to settlement embraces 889,403 acres. The amount allotted to the Indians within the limits of Todd County aggregates 636,300 acres. The amount reserved for school, agency, missionary and tribal purposes aggregates 40,302 acres. The estimated amount of school lands within the area to be opened and conveyed to the State of South Dakota is 50,880 acres. The area estimated to be disposed of to homestead settlers, over and above the amount provided for, aggregates 161,921 acres.

It is the understanding of your committee that the allotments have been made to all Indians on the reservation. Provision is made by the bill for the allotment of any minor child born subsequent to the completion of the allotments provided for and 60 days prior to the date set by the proclamation for the entry of the said surplus lands proposed to be opened.

In the opinion of your committee the surplus and unallotted lands are unnecessary for the use of the

Indians, and the opening of the reservation will result in a large increase in the settlement and development of that part of the State and will, to a very large extent, enhance the value of the holdings of the Indians. Your committee regards it as of the highest importance, not only to the Indians themselves but to the people of the State and to the General Government, that all the surplus and unallotted lands should be opened to settlement at the earliest practicable date. The bill provides that prior to the issuance of the proclamation opening the lands to settlement the Secretary of the Interior shall cause allotments to be made to the Indians and minors belonging to or holding tribal relations with the Indians upon the reservation who have not heretofore been allotted.

Sections 16 and 36 of the lands in each township are not to be disposed of, but are reserved for the use of the common schools of the State, and these lands are to be paid for by the Government in conformity with the provisions of the act admitting the State of South Dakota into the Union. The Secretary of the Interior is authorized to reserve such lands as are necessary for agency, school, and religious purposes in conformity with the practice of the Government in measures of this character.

The lands to be opened are to be inspected, appraised, and valued by a commission for that purpose appointed by the President, which appraisal is subject to the approval of the Secretary of the Interior. The lands to be opened are reserved for homesteads, and one-fifth of the price so fixed for the land is to be paid upon entry thereof and the balance in five equal installments, the first within two, and the remainder in three, four, five, and six years, respectively.

The Secretary of the Interior is also authorized to reserve from said lands such tracts for town-site purposes

as in his opinion may be required for the future public interests.

The moneys realized from the sales of the town sites are to be applied to the benefit of the tribe. The moneys derived from the sale of the lands as well as the town sites are to be deposited in the Treasury of the United States to the credit of the tribe, and the same shall draw interest at the rate of 3 per cent per annum, and these moneys shall be expended for the benefit of the tribe under the direction of the Secretary of the Interior.

Upon the recommendaton of the department, an additional section has been added to the bill which prohibits the introduction of intoxicating liquors upon the lands to be opened for a specified period. It is felt by your committee that such a prohibition would serve as a protection, especially to the Indians, and their interests would be highly conserved if the use of intoxicants were prohibited. This is a matter of the highest concern, not only to the Indians themselves, but to the General Government and to the pople of the State, that the Indians should be safeguarded as much as possible from the evils resulting therefrom.

Although Congress has full power to enact legislation of this character without the consent of the Indians, it was felt the Indians should be fully advised as to the provisions of the epending measure and their views should be asked in regard thereto. The bill in question was submitted to the Indians of the reservation by a competent and experienced Indian inspector and the wishes of the Indians were sought to be met in a fair and just spirit.

Your committee regarded the method proposed under the provisions of the bill for the appraisement and classification of the lands as fair, just, and equitable, both as to the Indians themselves as well as to the prospective

settlers, and they do not look with favor upon the change suggested in this respect by the report of the department thereon. Other lands upon this reservation were appraised and classified in the manner proposed in the pending bill, under which they were heretofore opened to settlement, and the result of such appraisement and classification was fair, just, and satisfactory. The cost thereof was limited and aggregated substantially 1 cent per acre of the lands so appraised and classified. Your committee does not regard such appraisement and classification as any serious burden upon the Indian, and favor following the rule heretofore adopted rather than fixing without definitie knowledge an arbitrary price upon the lands, as suggested in the recommendation of the department.

The communication of the Secretary of the Interior, reporting upon this bill, is herewith submitted and made a part of this report.

Department of the Interior,
Washington, May 19, 1911.

Hon. Robert J. Gamble,
Chairman Committee on Indian Affairs, United States Senate.

Sir: I have the honor to acknowledge the receipt, by your reference, of a copy of Senate bill 110, Sixty-second Congress, first session, providing for the disposal of the surplus lands within the Rosebud Reservation, S. Dak.

The department is not in a position to submit a report on the merits of this bill, or to speak with regard to the wishes of the Indians of the Rosebud Tribe as to this matter. When Inspector McLaughlin has ascertained the wishes of the Indians, I shall take pleasure in submitting a full report as to their views of the pending bill, together

with such recommendations as the circumstances may require.

Respectfully,

Frank Pierce, *Acting Secretary.*

Department of the Interior,
Washington, April 30, 1912.

Hon. Robert J. Gamble,
Chairman Committee on Indian Affairs, United States Senate.

Sir: I have the honor to refer to departmental letter of May 19, 1911, regarding Senate bill 110, Sixty-second Congress, first session, providing for the disposal of the surplus lands within the diminished Rosebud Reservation, S. Dak.

Under departmental instructions of May 22, 1911, Inspector James McLaughlin, on November 1, 1911, met representative Indians of the Rosebud Tribe in council assembled for the purpose of discussing with them the pending bill. While he found the Indians somewhat opposed to opening the diminished reservation at this time, as the inclosed copies of the inspector's report and the council proceedings will show, yet the inspector points out that:

"The Rosebud Indians are well disposed and will, I am confident, acquiesce in the opening of their surplus lands under the provisions of the said Senate bill, which, if enacted into law, may, on the whole, be for their best interests, * * *."

The department agrees with the views of the inspector as indicated in the foregoing, and believes that, on the whole, it will be advantageous to the Rosebud Indian Tribe at large to dispose of the surplus lands within their diminished reservation.

For the information of your committee, however, it may be pointed out that by successive openings within the past few years this reservation has been successively reduced to less than one-fourth of its original area. Gregory County was opened in 1904, under the provisions of the act of April 23, 1904 (33 Stat. L., 254); Tripp County, in 1908, under the act of March 2, 1907 (34 Stat. L., 1230); and Mellette County will be opened during the present year under the act of May 30, 1910 (36 Stat. L., 448), the President's proclamation therefor having been issued on June 29, 1911.

It may be said also that upward of 7,000 Indians within this reservation have previously been allotted approximately 1,679,000 acres of land, of which 636,300 acres fall within Todd County—the diminished reservation. From the inspector's report, it appears that Todd County comprises 889,403 acres. Deducting from this the 636,300 acres allotted and 40,302 acres reserved for school, agency, missionary, and tribal purposes, leaves only 212,801 acres unallotted and unreserved. Of this, it is estimated that 50,880 acres will pass to the State of South Dakota as "school lands" should the bill become a law. There would remain, therefore, approximately 161,921 acres to be disposed of to actual homestead settlers. The special allotting agent, who has been working within this reservation for a number of years and who is therefore familiar with local conditions, advised the inspector, as shown by the report herewith, that not to exceed 50,000 acres of good land remain undisposed of within this reservation and that the greater part of the surplus lands consist of sand hills and barren buttes of but little value.

It appears further from the inspector's report that by act of March 2, 1911, the State Legislature of South Dakota so changed the county boundary lines as to cause

all lands within the diminished Rosebud Reservation to fall within Todd County, and that no part of this reservation now lies within Bennett County. In the caption of the bill the words "of a portion" could well be eliminated and the words "Todd and Bennett Counties" changed to read "Todd County."

If the bill becomes a law, it will provide for opening all of the lands now constituting the diminished Rosebud Reservation, and there will, therefore, remain no further diminished reservation. Any allottee of this tribe who desires so to do may relinquish his allotment and take other lands in lieu thereof under authority found in the acts of October 19, 1888 (25 Stat. L., 611), and March 3, 1909 (35 Stat. L., 784). Therefore the clause on page 2 of the bill beginning with the word "that" in line 10, down to and inclusive of the word "reservation" in line 14, should be eliminated; also the words "*And provided further,*" on page 2, lines 14 and 15.

Section 3 provides for the establishment of town sites and requires that not to exceed 20 per cent of the money derived from the sale thereof shall be expended in the construction of schoolhouses or other public buildings. To facilitate educational work among the Indians and to relieve the Government from the expense connected therewith as much as possible, the incorporation of the following in the form of an amendment to section 3 is respectfully suggested:

Strike out the period after the word "located," in line 21, page 4, inserting in lieu thereof a colon and "*Provided*, That all children of school age and of Indian parentage shall be admitted at all times to the public schools within said town sites on an equal footing with all other children admitted to said schools."

This department has heretofore suggested to your committee that, in its opinion, a less expensive method of

disposing of surplus lands within Indian reservations can be found than by classification and appraisalment by a commission of highly paid appointees. See departmental letter of April 5, 1910, reporting on Senate bill 3284, Sixty-first Congress, second session, incorporated in Senate Reports Nos. 590 and 591, same session.

The lands on this reservation were appraised at \$6 per acre for agricultural lands of the first class, \$4 per acre for agricultural lands of the second class, and \$2.50 for grazing lands. It is believed that these figures may properly be adopted for the purposes of disposing of the remaining lands, and is suggested that for sections 4 and 5 of the bill there be substituted the following:

"Sec. 4. That the price of said lands entered as homesteads under this act shall be as follows: Upon all land entered or filed on within three months after the same shall have been opened to settlement and entry, \$6 per acre; upon all lands entered or filed on after the expiration of three months and within six months after the same shall have been opened to settlement and entry, \$4 per acre; and after the expiration of six months after the same shall have been opened to settlement and entry the price shall be \$2.50 per acre, and after the expiration of three years after the same shall have been opened to settlement and entry the lands remaining unentered shall be disposed of under such rules and regulations as the Secretary of the Interior may prescribe without regard to any of the prices per acre designated herein."

Should this amendment be adopted, the remaining sections should be renumbered accordingly and the last proviso of section 6, lines 16 to 20, page 7, should be eliminated from this bill.

It is noted that section 7 provides that the net proceeds derived from the sale of these lands shall be deposited in the Treasury of the United States to the

credit of the said Indians and "shall be at all times subject to appropriation by Congress for their education, support, and civilization."

Indian tribal moneys in the Treasury of the United States are at all times subject to disposition by Congress. The necessity, therefore, for the language quoted above is not apparent. Before any expenditure could be made therefrom, additional legislation would be necessary. Frequently this is delayed. Emergencies may arise that demand prompt and speedy adjustment. In some cases the delay incident to procuring congressional action may work untold hardship, if not prove disastrous. Discretion has heretofore been vested in this department to expend Indian tribal moneys received from the sale of surplus lands for the benefit of the Indians. See act of March 22, 1906 (34 Stat. L., 80), Colville Reservation; act of April 21, 1906 (34 Stat. L., 124), Lower Brule Reservation; act of May 29, 1908 (35 Stat. L., 460), Standing Rock and Cheyenne River Reservations. Others could be cited.

Accordingly, it is respectfully recommended that a comma be inserted after the word "Indians" on line 4, page 8, of the bill; that lines 5 and 6 be eliminated and the following substituted therefor:

"Including the interest thereon, may be expanded for their benefit, or distributed per capita, in the discretion of the Secretary of the Interior."

Section 8 of the bill provides that the lands granted to the State of South Dakota shall be paid for at the rate of \$2.50 per acre, and section 9 appropriates \$125,000 for this purpose. The inspector's report indicates that there are upward of 50,280 acres of land in sections 16 and 36 in Todd County within the diminished reservation. At \$2.50 per acre this amounts to \$127,200. To meet any discrepancy that might arise as to acreage, it is suggested that the word "twenty-five," in line 24, page 8, section 9, be changed to "thirty."

In this connection, however, it may be said that the department is of the opinion that \$2.50 per acre is but a comparatively small price as a rule to pay the Indians for lands granted within their reservations to States for school purposes. In this instance, because of the character of the lands that will remain after allotments are made, this price is probably adequate.

The words "not exceeding two sections in any one township" should be inserted in section 8 of the bill after the word "appropriated" in line 18, page 8.

Some limit should be fixed on the lands within any one township which the States might acquire as lieu selections, in case the original sections 16 and 36 or parts thereof are lost by reason of allotment or other disposition. Otherwise the States might acquire a large quantity of land in contiguous tracts to the exclusion of prospective settlers.

If the several amendments herein suggested are adopted, the words "making the appraisalment and classification provided for herein," in lines 4 and 5, section 9, page 9, should be stricken out and the following substituted: "carrying out the provisions of this act."

Previous examination by the Geological Survey enable that bureau to certify that there are no minerals of economic importance within the Rosebud Reservation, and section 13 of the act of June 25, 1910 (36 Stat., 855-859), is amply sufficient to enable this department to conserve any power-site or reservoir possibilities that may exist there.

Very respectfully,

Samuel Adams,
First Assistant Secretary

[#45]

(Letter to Senator Gamble from the Secretary
of the Interior concerning S. 110.)

Land-Allotments 42264-1911 99740-1911

42264-1911

99740-1911

J T R Senate Bill 1

Senate Bill 110,
62nd Congress, Rosebud.

Hon. Robert J. Gamble,
Chairman, Committee on Indian Affairs,
United States Senate.

Sir:

I have the honor to refer to Departmental letter of May 19, 1911, regarding Senate Bill, No. 110, 62nd Congress, First Session, providing for opening all surplus lands within the diminished Rosebud Reservation, South Dakota.

Inspector James McLaughlin met representatives of the Rosebud Indians on November 1, 1911, for the purpose of discussing with them the pending bill. He found the Indians decidedly opposed to the bill, principally because by successive openings within the past few years their reservation has been reduced to less than one-fourth of its original area. Gregory County was opened in 1904, under the Act of April 23, 1904 (33 Stats. L., 254); Tripp County in 1909, under the Act of March 2, 1907 (34 Stats. L., 1230), and Mellette County will be opened in 1912, under the Act of May 30, 1910 (36 Stats. L., 448); the President's proclamation therefor having been issued June 29, 1922. This leaves within the diminished reservation at this time the lands in Todd County only, which, from the Inspector's report (copy enclosed), contains only 889,403 acres, of which 636,300 acres have

heretofore been allotted and 40,302 acres reserved for school, agency, missionary and tribal purposes.

This would leave only 212,801 acres unallotted and unreserved, of which, it is estimated, 50,880 acres would pass to the State of South Dakota as "school lands" should the bill become a law. There would remain, therefore, approximately 161,921 acres to be disposed of to homestead settlers.

The Special Allotting Agent who has been working within this reservation for a number of years, and, therefore, familiar with local conditions, advises the Inspector that not to exceed 50,000 acres of good land remain undisposed of within this reservation, and that the greater part of the surplus lands consists of sand hills and barren buttes of but little value.

In view of the successive reductions made in this reservation during the past few years, the fact that the Indians are decidedly opposed to opening the diminished reservation at this time and that there will be but little desirable land to place on the market, should the bill become a law, I have the honor to recommend that no further action be had on the bill at this session of the Congress. To accede to the wishes of the Indians at this time would but promote a more kindly spirit among them and greatly facilitate administrative action of their affairs.

Respectfully,

Secretary.

[#45A]

(Letter dated April 26, 1913 from Superintendent, Rosebud Indian Agency to CIA)

Sir:

Replying to your letter of April 11, in relation to application of A. J. Wilcox, Attorney at Law of Colome for establishment of headquarters for Isaac Bettelyoun two days in the week in his town, will say that at the present, I am unable to recommend compliance with his request. Where are but few Indians living in the vicinity of Colome, and those that do can as easily go to Mr. Bettelyoun's residence to transact their business. I know of no good reason why I should recommend one of our Farmers to establish an office in any town. The only thought that would prompt the suggestion would be that of endeavoring to increase the trade in the town among our Indians. I believe that the more business our Indians have in town and the oftener they are there is an injury to them. They get into the habit of loafing, patronizing Pool Halls, besides too often indulging their appetite with liquor. However in this connection, I wish to say that the reputation of Colome as a good clean town, is excellent, and I do not wish to reflect upon the town or living in it, in this letter, because I wish my statements in a general way to apply to all towns.

About three years ago our Issue Station or rather the House for the Farmer, burned, and since that time it is a serious problem to know what to do in this District. The Issue Station is situated on Big White River now and is very inaccessible to get to our Issue Station, since the Home-steaders commenced to fence their farms, and this is what I meant when I said in my letter of October 16th, that I would reply further to your letter of October 12th. I want to make a recommendation relative to rebuilding

our Issue Station, but I want to be sure that I make it right so that it will do the most good to the greatest number. The Little Hamlet or the town of Hamil, which is located on the government town site, has been making a splendid effort to have the Issue Station rebuilt on the East 80 of the quarter reserved for the government town site. If this could be done, it would be the most central location that I could think of.

The Indians in this District live along the Big White River and in what is known as Bull Creek, and would be about the same distance from this location. The only objection one could raise to this location would be, they are trying to build a town here, and no doubt a saloon would be in close proximity to our Issue Station, where the Indians have to come on all business in connection with the Farmer. I have to the best of my ability, marked the enclosed Map, showing the approximate number of Indians, together with the allotments and acreage contained therein, in all of our Districts. While this information is not absolutely correct still it is near enough to form a good idea relative to comparing our Districts.

In Ponca District there are 905 allotments in Tripp County aggregating 144,800 acres. About one-fourth of these allotments belong to Indians in Ponca District. While the balance are largely owned by Indians located in Todd County. The Farmer at the Ponca Issue Station has looked after the allotments and Indians in Gregory County also, and has a few over 500 Indians to look after. In the Big White River District Mr. Bettelyoun, the Farmer, has about 1,700 allotments aggregating about 272,000 acres to look after as his District now stands. A great many of his allotments also belong to Indians in what used to be Meyer County, now Mellette, and Todd Counties. He has about the same number of Indians to look after that are located in Ponca District.

The Bull Creek District under Mr. Fihn as a farmer has about 1,889 allotments or 302,430 acres with a few over 800 Indians to look after. You will note that this District has more Indians and more allotments to look after than either of the other two. Still it is more compact and can more easily be looked after by Mr. Fihn than either of the other two. Again the allotments do not rent so readily in this District as in the first two mentioned. The Little White River District has about 968 allotments or 154,880 acres with a few over 500 Indians to look after. While the Black Pipe District has about 981 allotments aggregating 156,560 acres with a few over 500 Indians to look after.

These two Districts are the most troublesome of any of the Districts on the Reservation. The Bad Lands are located largely in these Districts which makes it difficult to go from place to place on account of the bad roads. The Cut Meat District has about 1,332 allotments with 299,120 acres, and a few over 1,000 Indians to look after. While it seems to be a large District, still there is but very little leasing of our Indian lands or allotments, it being in the closed portion of our Reservation, and the allotments are more compact with small farms in the District. The Agency has some over 1,200 Indians to look after, and is one of the largest Districts, but the farmer is assisted materially by being located in the Agency.

As time rolls on the work of looking after the allotments in Tripp County, will be largely decreased, for the reason that over 75% of our land sales have been in this Country. Hence, leasing in the future will be largely decreased. With Mr. Bettelyoun's present location on Section 1. Township 99, Range 76. He could look after that portion of the Ponca District located in Tripp County, in all probability as easily as can the farmer from Ponca Issue Station, but he is residing on his own farm, using

his own buildings for this work. Before he was appointed, to this position we were paying \$25.00 house rent in Winner for Mr. Mosier, and after furnishing him with a government team, it was going to cost us \$25.00 per month additional for stable room. Hence, the appointment of Mr. Bettelyoun is at the present time saving \$50.00 per month for rent, but this cannot continue for all time to come. But something will have to be done relative to either building on our old Issue Station on Big White River or some other central location.

Considering all things as they stand, and further that Colome is not within the boundaries of Big White River District. I do not feel like recommending the compliances with Mr. Wilcox's application.

Very respectfully,

Superintendent.

[#45B]

(Excerpts from letter dated September 18, 1913
from the Superintendent, Rosebud Indian Agency to
the CIA)

Sir:—

In answer to Education-Employees BCH dated September 13, 1913, calling for the names of the teachers and housekeepers at the various Day Schools in this jurisdiction, I am reporting the following:

Ironwood Day School

* * *

Spring Creek Day School

* * *

Agency Day School

* * *

Cut Meat Day School

* * *

Upper Cut Meat Day School

* * *

Lower Cut Meat Day School

* * *

He Dog's Camp Day School

* * *

Red Leaf Day School

* * *

Blackpipe Day School

* * *

Corn Creek Day School

* * *

Ring Thunder Day School

* * *

Pine Creek Day School

* * *

Little White River Day School

* * *

Oak Creek Day School

* * *

White Thunder Day School

* * *

Little Crow's Camp Day School

* * *

Whirlwind Soldier Day School

* * *

Milk's Camp Day School

* * *

Bull Creek Day School

* * *

Big White River Day School

* * *

White River Day School

* * *

White Lake Day School

[#46]

(Legislative history of H.R. 28606, the House of Representatives companion bill to S. 110 — a bill for the sale of surplus land in Todd County in the Rosebud Reservation.)

[49 Cong. Rec. 109 (1913)]

Rosebud Reservation: bills for sale of surplus and unallotted lands in (see bills S. 110*; H.R. 28606)

[49 Cong. Rec. 60 (1913)]

H.R. 28606 — To authorize the sale and disposition of a portion of the surplus and unallotted lands in Todd County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Martin of South Dakota; Committee on Indian Affairs, 2525.

[49 Cong. Rec. 2525 (1913)]

By Mr. Martin of South Dakota: A bill (H.R. 28606) to authorize the sale and disposition of a portion of the surplus and unallotted lands in Todd County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect; to the Committee on Indian Affairs.

[#47]

(Legislative history of H.R. 28778 — a bill to amend the Act of May 30, 1910.)

[49 Cong. Rec. 109 (1913)]

Rosebud Reservation: bill for disposition of proceeds of sales of surplus and unallotted lands in (see bill H.R. 28778).

[49 Cong. Rec. 64 (1913)]

H.R. 28778 — To amend an act approved May 30, 1910, entitled "An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh Counties, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect."

Mr. Martin of South Dakota; Committee on Indian Affairs, 3305.

[49 Cong. Rec. 3305 (1913)]

Public Bills, Resolutions, and Memorials

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

* * *

Also, a bill (H.R. 28778) to amend an act approved May 30, 1910, entitled "An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh Counties in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect"; to the Committee on Indian Affairs.

Land-Allotments
48744-1913

P.R.S. 5595

Opening Rosebud Reservation.

Mr. Samuel J. Bordeaux, et al.,
Rosebud, South Dakota.

My Friends:

I have received your letter without date, in which you protest against the opening of the surplus lands within the diminished part of the Rosebud reservation, as proposed in H.R. Bill 28606, 62nd Congress, 3rd Session, and set forth your reasons therefor.

As this bill was not enacted during the last session of the Congress, no further action thereon will be taken. However, it is probable that similar legislation will be introduced during this or some subsequent session of the present Congress. Should such legislation be introduced,

your protest will be given careful consideration in connection with the Department's report thereon.

Respectfully,

(Signed) Lewis C. Laylin
Assistant Secretary.

Rosebud Agency, S.D.

The Hon. Sec. of the Interior

Sir.

As regards the bill to sell the surplus land in Todd Co. S.D. introduced by Rep. Martin of S.D. we respectfully request that you will use your influence to have this bill held up until you can have report made to you by a competent and disinterested officer of your department. When we say disinterested we mean a man who is not a resident of S.D.

The Indian Office seems to be under the impression that we are making great strides in farming, when the fact is that we live in a country subject to summer drouth, where the best kind of white farmers fail to get more than one crop in three years. The very best farming land that was in the Rosebud Reservation we gave up when the Counties of Tripp and Gregory were opened to settlement and on two thirds of the allotments in Todd Co. a man would starve to death if he tried to live by farming alone. Our country however is a fine stock country and if a considerable portion of our funds was invested in cattle for us and the fence which extends two thirds of the way around Todd Co. completed and proper supervision given, we could with gardening make a living but if this bill to sell our surplus land in Todd Co. becomes a law and Todd Co. opened The State Herd Law takes effect that is those white settlers who would

come in will not have to fence and could seize any stock trespassing, for damages. That would entirely kill the stock industry. To read Mr. Martin's bill one would think that a large amount of land would be available for settlers while the fact is that after the allotment is completed there will not be 150 quarter sections vacant and these would consist of hills ravines and bad lands valuable to us but useless to settlers. As things are now the land of deceased Indians is sold and the white men who buy and come among us fence their land and give us no trouble, in fact we are on the best of terms with these men and these men know that to open Todd Co. means ruin to us and will depreciate the value of inherited land so that it could not be sold at any price, for whence would come the funds to pay for a County organization. We conclude by stating that no one is in favor of this opening except politicians of S.D. and a few Indians and mixed bloods who have been promised jobs and one white man who owns a farm in Todd Co. is a partner in a store there and who has been for sometime past trying to induce a Town Site Company to start a town close by his place.

We would also state that Inspector McLaughlin of your department is better acquainted with conditions here than any man we know of and we have great confidence in his judgment. We would like you to order the allotment completed which can be done by the present officials without additional expense and then to send some one to report upon the extent and value of the residue.

Samuel J. Bordeaux

Chas. Wright

Paul Dorian (his mark)

David Dorian

Andrew Night Pipe

Paul Yellow Hawk

Arrow Sides

Stephen Brave Bird (his mark)

William Dillon

Big Tail Zelota (his mark)

Chas. Standing Cloud

Charley Plenty Horse

Geo. Gunhammer

Chauncey Eagle Horn

John Columbe

Alfred Night Pipe

Rosebud Agency, S.D. March 26, 1913

Hon. Commissioner of Indian Affairs

Washington, D.C.

Dear Sir:—

We, the undersigned Indians of Todd County, S.D. respectfully protest against the proposed opening of this County to settlement. We protest against opening of our last remaining portion of our once large Reservation for the following reasons:

1. We have already been deprived of the Counties of Gregory, Tripp and Melette within the last few years none of which we have received payment in full for yet. There is still plenty of land opened to entry for settlers in these Counties already opened.

2. We want to keep what little unallotted land there is in Todd County, that is of any value, for our children who are yet unallotted and for those who will be born in the near future, as we realize that when this County is opened for settlement that all our children born afterward will be homeless, a condition of affairs that will make in time a people without a home.

3. We believe the only persons who really desire this County to open to settlement are white men with a few Indians who are influenced by these same white men, and they want it opened for their own private benefit and not to benefit the great majority of the Indians.

4. We think that the great body of Indians interested should be committed and their wishes ascertained in re-

Thomas Greenwood,
 William Little Whitland,
 Jacob Eaglehawk ^{his} mark
 Little Whitland ^{his} mark
 William Perryman
 K. I. L.
 Alice Whitland
 Nicole Peters or Williams
 William Medicine Eagle.
 George R. Bear Horse.
 Mary Dillon

Thomas Eaglehawk
 Louis H. Sullivan
 Paul Yellow Horse
 Big Soldier ^{his} mark
 Chief Muggins ^{his} mark

Charles Lawrence.
 Thomas Wright
 Albert Ben Bird
 Early Plenty Horse
 Paul Gordon ^{his} mark
 James H. H. ^{his} mark
 John Wright
 James H. H. ^{his} mark
 John H. H. ^{his} mark
 John H. H. ^{his} mark
 David D. D.

To The Commissioner of Indian Affairs:

We, the undersigned to hereby object to the opening for settlement by the homesteaders of the unallotted lands belonging to the Indians of the Sioux Nation, in Todd County, South Dakota, on the Rosebud reservation, and give the following reasons:

We have already, since the treaty of 1889, contributed to the Government, to be opened to settlers, and sold, four tracts of land, vis: Gregory County, Tripp County, Mellette County, and Lower Brule, and we think that you can readily see the justice of our demand that you do not open the lands in Todd County for settlement. Further, we wish to provide for our children who have not been allotted lands and for those children who are being born today and will be born in the future, and we think that the best way to this is to hold the lands in

lands which may hereafter be submitted for consideration and report by this Office.

Respectfully,
(Signed) F. H. Abbott
Acting Commissioner.

Department of the Interior
United States Indian Service
Rosebud, So. Dakota
March 7, 1913

The Honorable,
Commissioner of Indian Affairs,
Washington, D.C.

Sir:

I herewith enclose two petitions, one from the Black Pipe and the other from the Cut Meat Districts remonstrating against the opening of Todd County. The one from the Black Pipe District, I notice, has been permitted to be signed on the Typewriter, but the party who brought the petition or rather remonstrance, assured me that the same was a true copy of the original petition.

Very respectfully,
(Signed) J. H. Scriven
Superintendent.

To the Commissioner of Indian Affairs

We the undersigned do hereby object to the opening for settlement by the homesteaders, of the unallotted lands belonging to the Indians of the Sioux Nation, in Todd County, S.D., on the Rose Bud reservation, and give the following as our reasons;:

We have already, since the treaty of 1889, contributed to the Government, to be opened to settlers, and sold, four tracts of land viz: Gregory County, Tripp County, Mellett County, and Lower Brule, and we think that you can readily see the justice of our demand that you do not open the lands in Todd County for settlement. Further we wish to provide for our children who have not been allotted lands and for those children who are being born today and will be born in the future, and we think that the best way to this is to hold the lands in Todd County, in reserve until such time as it can be allotted to our children.

We sincerely entreat that you give this just and fair consideration, and that the result will be satisfactory to all we beg to remain,

Yours very respectfully,

- | | |
|-----------------------------|-----------------------------|
| 1 George Crow Eagle | 31 James Red Weasel. |
| 2 Th. Crow Eagle. | 32 Woods Father. |
| 3 Robt. Ugly Wild Horse. | 33 Charging Hawk. |
| 4 James Bull Bat. | 34 Stand At Him. |
| 5 Samos Bear Shield. | 35 Geo. Medicine Whirlwind. |
| 6 Jeffery Brush Breaker. | 36 Quick Bear. |
| 7 Bear Shield. | 37 Chas. Owns The Battle. |
| 8 White Crane Walking. | 38 Walking Bull. |
| 9 Shoot At Hail. | 39 Chas. Walking Bull. |
| 10 Poor Thunder. | 40 Charging Bear. |
| 11 Eagle Horse. | 41 Henry Charging Bear. |
| 12 Ugly Wild Horse. | 42 Albert Crazy Bear. |
| 13 Good Fox. | 43 Frank Skunks Father. |
| 14 Eagle Wolf. | 44 Knife Scabbard. |
| 15 Levi Eagle Chief. | 45 Ben Looking White. |
| 16 Levi White Buffalo. | 46 James Little Chief. |
| 17 Hawk Ghost. | 47 Hugh Charging Bear. |
| 18 Bull Bat. | 48 Bull Walks Behind. |
| 19 John Yellow Elk. | 49 Mr. Yellow Elk. |
| 20 Crow Eagle. | 50 Edward Eagle Bear. |
| 21 Joe. Fire Heart. | 51 Eagle Bear, Sr. |
| 22 Hot Stampede. | 52 Plenty Bull. |
| 23 Un. Bear. | 53 Gilbert Little Chief. |
| 24 Olan Little Crow. | 54 Hunter Big Crow. |
| 25 Un. Bear Shield. | 55 Ahaz. Forgets Nothing. |
| 26 Forgets Nothing. | 56 Goes To War. |
| 27 Jackson Crazy Bear. | 57 Horned Antelope. |
| 28 Richard Forgets Nothing. | 58 Abraham Horned Antelope. |
| 29 Henry Eagle Bear Jr. | 59 Silas Quick Bear. |
| 30 George Red Weasel. | 60 Bill Black Bull. |
| 66 Neck Shield. | 61 Phillip Black Bull. |
| 67 John His War. | 62 Dan. Black Bull. |
| 68 Eagle Man Sr. | 63 Silas Chasing His Horse. |
| 69 Henry Quick Bear. | 64 Fox " " " " " " |
| 70 Ahaz. Dog Eyes. | 65 Spotted Owl. |
| 71 Eddie Dark Face. | 66 Henry Spotted Owl. |
| 72 James Little Turtle. | 66 Search The Thimble |

77. Ch. Robb.
78. 1. Jarvis.
79. Tools Bull. Bull.
80. Tools Bull. Bull.
81. Tools Bull. Bull.
82. Tools Bull. Bull.
83. Tools Bull. Bull.
84. Tools Bull. Bull.
85. Tools Bull. Bull.

87. Jumping Ekl. Sr.
88. Sam. Little Knife.
89. Eli Wooden Ring.
90. Eagle Horse.
91. Fred Left Hand.
92. Amos Wooden Knife.
93. Leslie Wooden Knife.
94. Wooden Knife Sr.
95. Tom. Flying Horse.
96. Frank Sleeping Bear.
97. Long Warrior.
98. Andrew Long Warrior.
100. Star Boy.
101. Ben Long Warrior.
102. Luke Leading Cloud.
103. Leading Cloud Sr.
104. Louis Eagle Hawk.
105. Good Boy.
106. Runs Close To Village.
107. Miller.
108. Jas.
109. Jno.
110. Shoot At Hall.
111. Comes From Among.
112. Spotted Bear.
113. Talking Bull Sr.
114. Chas. Talking Bull.
115. Alex. Jarvis.
116. Peter Jarvis.
117. Tools Sr.
118. Jas. Tools.
Plenty Bull.
120. Fred Ashley.
121. Joanes Runs Close To The

Reuben Quick Bear

To the Commissioner of Indian Affairs:

We, the undersigned do hereby object to the opening for settlement by the homesteaders of the unallotted lands belonging to the Indians of the Sioux Nation, in Todd County, South Dakota, on the Rosebud reservation, and give the following reasons:

We have already, since the treaty of 1889, contributed to the Government, to be opened to settlers, and sold,

four tracts of land, viz: Gregory County, Tripp County, Mellette County, and Lower Brule, and we think that you can readily see the justice of our demand that you do not open the lands in Todd County for settlement. Further, we wish to provide for our children who have not been allotted lands and for those children who are being born today and will be born in the future, and we think that the best way to this is to hold the lands in Todd County, in reserve until such time as it can be allotted to our children.

We sincerely entreat that you give this just and fair consideration, and that the result will be satisfactory to all, we remain,

Yours very respectfully,

Reuben Quick Bear
George Little
Tom. Flying Horse
Chas. Talking Bull
Jas. Tools
High Bold Eagle
Vern. Bangs
Frank Little Warrior
George Little
William Sharp Fish
Eli Wooden Ring
Good Shield
To and
Plenty Bull
Lester Ham
Lester Ham

BEST COPY AVAILABLE

Wm. L. L. L.
 Sharp Fish
 Pluck
 Pluck
 Pluck
 Pluck

High Bold English

Up Brought

Frank Little Brought

George Brought

High Bold Fish

High Bold Fish

High Bold Fish

High Bold Fish

Pluck

Pluck

Pluck

Wounded Shield

Sharp Fish

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Wm. L. L. L.

Sharp Fish

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Pluck

Little Black Thunder
 No. 1
 No. 2
 No. 3
 No. 4
 No. 5
 No. 6
 No. 7
 No. 8
 No. 9
 No. 10
 No. 11
 No. 12
 No. 13
 No. 14
 No. 15
 No. 16
 No. 17
 No. 18
 No. 19
 No. 20
 No. 21
 No. 22
 No. 23
 No. 24
 No. 25
 No. 26
 No. 27
 No. 28
 No. 29
 No. 30
 No. 31
 No. 32
 No. 33
 No. 34
 No. 35
 No. 36
 No. 37
 No. 38
 No. 39
 No. 40
 No. 41
 No. 42
 No. 43
 No. 44
 No. 45
 No. 46
 No. 47
 No. 48
 No. 49
 No. 50
 No. 51
 No. 52
 No. 53
 No. 54
 No. 55
 No. 56
 No. 57
 No. 58
 No. 59
 No. 60
 No. 61
 No. 62
 No. 63
 No. 64
 No. 65
 No. 66
 No. 67
 No. 68
 No. 69
 No. 70
 No. 71
 No. 72
 No. 73
 No. 74
 No. 75
 No. 76
 No. 77
 No. 78
 No. 79
 No. 80
 No. 81
 No. 82
 No. 83
 No. 84
 No. 85
 No. 86
 No. 87
 No. 88
 No. 89
 No. 90
 No. 91
 No. 92
 No. 93
 No. 94
 No. 95
 No. 96
 No. 97
 No. 98
 No. 99
 No. 100

Emmet Pong
 Red Seal
 Little

Heard

Red Seal

Little the arrow
 Little eye
 Little the arrow
 Little the arrow

Little the arrow

Little the arrow

Little the arrow

Little the arrow

Little the arrow

Little the arrow

Little the arrow

Little the arrow

Little the arrow

Red Seal
 Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

Red Seal

To the Commissioner of Indian Affairs,

We, the undersigned do hereby object to the opening for settlement by the homesteaders of the unallotted lands belonging to the Indians of the Sioux Nation, in Todd County, South Dakota, on the Rosebud reservation, and give the following reasons:

We have already, since the treaty of 1889, contributed to the Government, to be opened to settlers, and sold, four tracts of land, viz: Gregory County, Tripp County, Mellette County, and Lower Brule, and we think that you can readily see the justice of our demand that you do not open the lands in Todd County for settlement. Further we wish to provide for our children who have not been allotted lands and for those children who are being born today and will be born in the future, and we think that the best way to this is to hold the lands in Todd County, in reserve until such time as it can be allotted to our children.

We sincerely entreat that you give this just and fair consideration, and that the result will be satisfactory to all, we remain,

Yours very respectfully,

*John A. Thompson, John A. Thompson,
Charles H. Thompson, et al.*

Department of the Interior
United States Indian Service
Rosebud Agency, S. Dak.
March 13, 1913.

The Honorable,
Commissioner of Indian Affairs,
Washington, D.C.

Sir:

I herewith enclose two petitions, one from Little White River District, and the other from the Cut Meat District, protesting against the opening of Todd County to settlement.

Very respectfully,
(Signed) John Scriven
Superintendent.

[#49]

(Letter of Dec. 9, 1915 to Sec. of Interior from the Commissioner of Indian Affairs concerning construction of a bridge on land formerly within the Rosebud Reservation)

The Honorable
The Secretary of the Interior

Sir:

I have your letter of the 7th instant, requesting my decision of certain questions raised by the Commissioner of Indian Affairs in his letter to you dated December 1, 1915, as follows:

"The Board of County Commissioners of Mellette County, S.D., proposes to construct a bridge across the Little White River on the section line between Sections 26 and 35, Township 40, Range 30, in said County. The site for the bridge is on land formerly within the Rosebud Reservation but since opened for settlement. The NE $\frac{1}{4}$ of Section 35, on which one end of the bridge will rest, has been allotted and is now held in trust by the Government. The SE $\frac{1}{4}$ of Section 26 has been deeded to an Indian. Under the laws of the State, land for 33 feet on either side of a section line is reserved for public highways unless such land is impracticable for use as a highway and rights of way are acquired on other land. The land on which the proposed bridge is to rest will therefore become a public highway as soon as the State cares to thus utilize it.

"The proposed site is in an Indian community and the Indian population in that region is far greater than the white population. A bridge at the place designated would be of great use to the

Government in the transportation of supplies, in addition to the benefits which would be derived by the residents. In view of this and the fact that a large amount of the property in Mellette County is held in trust by the Government and is consequently untaxable, the Supervisor in Charge of the Rosebud School recommends that an arrangement be made whereby the Indians will bear half the cost of the erection of the bridge.

"Under the State laws of South Dakota, each county in the State must enter into a contract once a year with some reputable bridge company for such bridges and structural steel as the county may need during the year. Then when the county wants a bridge it merely orders the construction thereof under the contract thus made. In pursuance of this law, Mellette County is now under contract. For this reason, if the bridge is built by the county it will have to be built by this company under the terms of such contract.

"Under the law contracts for supplies or services can be made by the Government only after due public advertising respecting the same, with exceptions in certain cases (sections 2083, 3709, R.S., Acts March 3, 1877, section 1, 19 Stats., 291, and July 13, 1892, section 3, 27 Stats., 143, II Op. Att. Gen., 257, III *ibid*, 437). The present case can not be considered as one of these exceptions. The question therefore arose whether the Government could join with the county and assume half the construction cost without advertising according to the law, even though the contract of the county was made after due advertisement pursuant to State law. To avoid this difficulty it was suggested that the county assume the entire burden of the construction and after completion the Government could purchase a one-half interest in the bridge.

"The fund which it is proposed to use in the purchase of the bridge arises under the provisions of the Act of March 2, 1907 (34 Stat., 1230-31), authorizing the sale of a portion of the surplus lands of the Rosebud Reservation. Under this Act, after the deposit of \$1,000,000 in the Treasury, the balance of the proceeds "shall be deposited in the Treasury of the United States to the credit of the said Indians and shall be expended for their benefit under the direction of the Secretary of the Interior * * *." The Office would therefore like to know whether, in the absence of specific legislation the Department would have the power to make use of such funds in the purchase of the bridge at a location on land in which the United States will have no interest.

"The county has given the bridge company a tentative order to proceed with the construction, contingent upon the Superintendent being authorized to buy a half interest in the bridge after its completion. The county will issue its warrant to the construction company in payment for the bridge. The warrants are discounted at five per cent, and this Office has no information concerning the time of payment. The question therefore arises as to whether the county has any ownership in the bridge until payment is made on the warrant and whether the Superintendent in charge of the reservation could legally pay the county for the one-half interest until the county has acquired full title to the bridge either by actual payment of the amount of the warrant or by the contractor's accepting the warrant in payment and waiving any further claim on the bridge."

The funds derived from the sale of the surplus lands of the Rosebud reservation (act of March 2, 1907, 34 Stat., 1230, 1231) are "trust funds" and so carried on

the books of the Treasury, and the balance thereof, over and above the special fund of \$1,000,000, is to be expended, under the direction of the Secretary of the Interior, for the benefit of "the Indians belonging and having tribal rights on the Rosebud reservation," the same act providing further, as an alternative, that the said secretary,

"may, in his discretion, upon application by a majority of said Indians, pay a portion of the same to the Indians in cash, per capita, share and share alike, if in his opinion such payments will be in the best interests of said Indians."

I think it is clear, from the terms of the act as a whole, that it was the intent of Congress that said trust funds were to be expended for the equal and exclusive benefit of the Indians, and the authority of the Secretary of the Interior to make expenditures from said fund is limited strictly to objects that are of equal benefit to all of the Indians and not of primary benefit to others.

From the facts appearing, it would seem that the bridge, part of the cost of which it is proposed to meet by an expenditure from said trust fund if proper, would be of great benefit to the Government itself; it would be of particular use to some, if not all, of the Indians of the Rosebud reservation; and it would be of general use and benefit to all residents of Mellette County, Indian and white alike.

Aside from all question as to form and legality of contract etc., I do not think the erection of a bridge, for the broad public uses intended, would be a work "for their benefit" within the meaning of said act, and any expenditure made on such account could not, on

1360

the facts appearing, be regarded as an expenditure "for their benefit."

Respectfully,

(Signed) W. W. Warwick
Comptroller.

1361

[#50]

(Series of letters between G. Van Meter and the Department of Interior in 1915 concerning the trespassing of cattle on land formerly within the Rosebud Reservation)

INDIAN OFFICE.

FILES.

CAUTION!

Positively no papers to be added to or taken from this file, except by an employee of the Mails and Files Division.

By order of

E. B. MERRITT,
Asst. Commissioner.

A LETTER

Murdo S.D. Nov. 18 1914.

Mr. Davis,
Supt Industries,
Rosebud Agency, S. D.

Dear Mr. Davis:

I just talked to you by phone.

Quite a delegation of Mellette County settlers were in my office Saturday, and are insistent that they are not being legally treated in Mellette County by the Government.

They made affidavits, very strong ones, that they own or control by lease large tracts of land in

Mellette County, and are trying to make an honest living grazing a few cattle there. That they confine their cattle to their land leased as nearly as is possible, and are constantly annoyed by the Indian and I D cattle which are allowed to roam as they please, on every bodys land and the Government protests if any settler attempt to enforce the Trespass Law, against the Indians the same, that the Government attempt to arbitrarily collect \$1.00 per head for all cattle (not under fence), and without any regard for the statutory provisions concerning same. Your Inspectors and your Indian police and deputies claim the right to take up all cattle without any legal process at all, all cattle even though they be on the settlers own land or on leased land. This is a plain violation of S. Dak. statutes, and Mellette County has been legally organized and it is subject to the laws of the state.

I judge from our telephone conversation that you contend that the Government has a right to arbitrarily fix a penalty of \$1.00 per head for all settlers stock, if allowed to run at large in Mellette County, claiming that Mellette County though organized, is still under the control of the Government.

Your administration has been a fine one; but give the settler a chance. Treat them, as citizens striving to develop Uncle Sams domain. Difficulties at best are hard enough. All they ask is that their stock be subject to the same law that the Indian stock is.

In this particular case at issue, you claim the right to collect \$240 cash, or \$1.00 per head for

cattle grazing in Mellette County, and he owns or controls 1600 acres, for which he has paid the Government price or rental price of the owner.

He has a right to graze his cattle on that land, though not under fence, and if they should trespass on an Indians land that Indian has his legal recourse the same as a white settler.

Trusting that you and the Department see this matter in that light, and that this matter can be amicably adjusted, I am respectfully, A. Rosebud Settler.

G. O. Van Meter.

Honorable Cato Sells,
Commissioner of Indian Affairs,
Washington, D.C.

Dear Sir:

I have just learned that there are now about to be started several cases against individuals for the trespass of stock in Mellette county, Rosebud Reservation, South Dakota. In that connection I desire to advise you of the following status of affairs.

Mellette county was opened to settlement by the United States and for the most part the jurisdiction of the county was turned over to the state of South Dakota. We have, in this state, what is known as a herd law which makes the owner of animals liable for the trespass of the same and yet in Mellette county, if Indian cattle trespass upon the land of white settlers the settler is told that because those cattle are under the jurisdiction of

the Indian Department he cannot collect damages under the state law. On the other hand if the cattle of white settlers stray upon Indian land the owner thereof is promptly held for trespass. It appears to me that this is a one-sided proposition that ought not to exist.

I would like to talk this situation over with you and I would be pleased if you would notify your superintendent at Rosebud and the United States Attorney in this circuit to take no further action looking toward the institution of these cases until they hear from you.

I will be in Washington the forepart of December and I will be pleased to talk over with you this and other matters with relation to the Indian country.

Yours very respectfully,

Harry D. Gandy

OFFICE OF
G. O. VAN METER
ATTORNEY AT LAW
MURDO HOTEL

Murdo, South Dakota, Dec 3
1914

Secretary of Interior,
Washington, D. C.

Dear Sir:

Mellette County, S.D. was formerly a part of the Rosebud Reservation. Was open for settlement in 1912. Settled and was Organized as a County in

1912. Is settled now and Homesteaders are commuting. Some vacant Government land in same. Settlers have had difficulty in attempting to cultivate same. It is not adapted to Farming and is really adapted to grazing. Settlers have tried to turn to Dairying and they are met with this opposition and it bids fair to be considerable question. INDIAN or I.D. cattle trespass in the settlers crops, and the Supt resists the taking up of said cattle under the S.D. statutes.

If the Settlers cattle trespass on Indian allotments, the Supt refuses to invoke the S.D. statutes but arbitrarily fixes and demands \$1.00 per head damage and forcibly drives the cattle 80 miles to the Agency and sells same for the costs. We think that unfair and illegal. We think our Supreme Court has passed directly on that point and holds that when a County formerly a part of an Indian Reservation, is open for settlement, and is ORGANIZED by proclamation and County Officers take their oath of office, it then CEASES to be a RESERVATION and becomes an ORGANIZED COUNTY, and that all voting citizens are subject to the same law both Criminal and Civil.

G. O. Van Meter	Murdo
Geo. W. Wright	Huron
John Sutherland	Pierre
I. H. Jones	Huron
S. A. Nash	Sioux Falls
Oscar C. Olson	Lemmon
P. P. Vallery	Nisland
W. G. Graham	Mitchell

Independent-Progressive Ticket

United States Senator—

H. L. LOUCKS

Cong. 1st Dist.—

A. L. VAN OSDEL

Cong. 2nd Dist.—

H. P. PACKARD

Governor—

R. O. Richards

Lieut. Governor—

GEORGE C. BERRY

Secretary of State—

C. B. REEVES

Attorney General—

M. J. RUSSELL

State Auditor—

J. J. WIPF

The Progressive Party

of

South Dakota

Huron, South Dakota,

1914

It seems to us that it is an opportune time for the Democratic Administration to candidly admit that the Republic Dealings with the Indians for the past century has been a series of blunders and errors and the time has arrived that the wrongs should be righted and that the White settlers rights should be respected on an equality with the Red Ward of the Government.

To be more specific in our request, we feel as if Indian Agents or Supts should be instructed "That in organized Counties, Indian rights, both Civil and

Criminal should be enforced in State Courts, in all cases where the Indian is a legal voter and citizen of the State."

Very Respectfully,

G. O. Van Meter.

Murdo, S.D.

Mr. G. O. Van Meter,
Murdo, South Dakota.

Jan. 25, 1915

Sir:

Receipt is acknowledged of your letter of December 3, 1914, addressed to the Secretary of the Interior, regarding the trespass of cattle on Indian allotments, and the action of the Officer in Charge of the Rosebud Reservation in insisting upon a settlement for these trespasses.

You refer to the fact that the Indians allow their cattle to graze on the open range and request that the Superintendent be instructed to take action only in accordance with the state law in case of trespass so that the Indian and the white settler will be treated alike in this matter.

The Supervisor in Charge of the Rosebud Agency has heretofore reported conditions on the lands to which you refer. The following is quoted from his report dated November 21, 1914:

"I would estimate that there have been not less than three or four thousand head of such cattle found on Indian lands during the past summer and I have collected several hundred dollars as trespass thereon. In other cases adjustment has been made whereby the owners would take out leases, in which case I either withdrew the claim for trespass or adjusted them on such lenient terms as would do justice to the allottee and the least injury possible to the owners of the stock.

I have taken great pains to advise all people of the law and also to advise them of my policy, which was to break up the open range grazing practice, and to in every reasonable way foster the fencing of these lands and thus utilize them in such way that the herds would be no annoyance or menace to the Indians or white population. In no case have I intended to bring trouble to the homesteaders or settlers trying to make a home in the country, but on the other hand have been protecting them in every way from range herds as I protect the Indians. It is well known that where large herds are allowed to roam over the ranges that neither white men nor Indians can succeed as farmers or home makers. While there has been considerable popular clamor against what I have been doing, it is in this case as is frequently found in similar matters, the larger holders circulate misinformation and false reports to the smaller holders and in that way work up popular indignation with a view of perpetuating their own practices. It is possible that reports of this kind have gone to the Office, for these men have succeeded so far as to cause such men as Mr. Van Meter, the attorney, to accept a very erroneous idea of what I really am doing and attempting to do. Naturally, these things will subside after the public comes to know the facts, consequently I feel there is nothing much to do as to that except as to allow time to work its own cure. But the question as to whether or not the law is enforced and maintained in this case is of vast import to the Indians and white people alike."

The Office believes that the Supervisor is taking the right course, and that no harm is being done to the homesteaders who are endeavoring to make their homes in that locality.

Any of the homesteaders who have more stock than can be grazed on their lands can, without doubt, negotiate leases with individual Indians for their allotments. These leases, however, must be on the regular form provided by this Department, and must be submitted to the Officer in charge of the Rosebud School.

The Office will do all in its power to aid the settlers and believes that the matter of grazing their cattle can be settled without any difficulty. It is determined, however, not to permit persons owning large herds of cattle to run them loose to graze on the Indian allotments. If necessary the Department of Justice will be requested to bring suits against the owners of such herds in order that trespass fees may be collected.

Respectfully,
(Signed) Cato Sells
Commissioner.

G. O. Van Meter
Attorney At Law

Murdo, South Dakota,

2/2/15

Hon Cato Sells,
Washington, D.C.

Dear Mr. Sells: Replying to yours of Jan 25th in reply to my letter to you 60 days old and unanswered will say that you are in gross error as to the complaint made.

You answer as to TRESPASS ON INDIAN ALLOTMENTS. I wrote you and can furnish you 20 affidavits that the Indian Agt Indians and employes have taken up HOMESTEADERS cattle on

their own land, or on open land or unallotted land over which you have NO AUTHORITY at all, and forced the settlers to pay \$1.00 per head, without the semblance of right. I can overwhelm you with the proof. The settlers of Mellette County have decided to resist such action and to make a test case and carry it to the Supreme Court. I further doubt if your Agent, Indians or employes have a right to take a settlers stock that is TRESPASSING ON an Indian allotment if within MELLETTE COUNTY. In the view of a recent Decision we are going to try that question also.

Further we intend to test in Mellette County the right of the Indian Department, to allow 16 Indian allottees to vote \$100 Public school bonds, erect School house, employ a white teacher, assess interest, float bonds, maintain school for 8 mo and to require the 4 white settlers residing in that School district to pay the whole bill: we doubt if they can do that.

The Supreme Court has frequently held that "Individual property cannot be confiscated without due process of law."

We have just had introduced and passed in the State Legislature a Law that will perhaps bring this question to a focus between the State Government and the Interior Department.

I am not fully advised as to the number of cattle belonging to white men that graze in Mellette Co but I will neventure the assertion that there are 4 times that number belonging to the Indians, and squaw men, on which they refuse to pay a penny tax, trespassing on the settlers land.

I think that ALL are and should be amenable to the Trespass law of SOUTH DAKOTA.

You conclude your letter just like all Gove employes conclude their letters "We will do all we can to aid the settlers settle and develop the lands" and yet you and your Agents and Police continue to practice their violations of the rights of the settlers and the Laws of South Dakota.

Very Respectfully,
G. O. Van Meter.

FEB 15 1915

Mr. G. O. Van Meter,
Murdo, South Dakota.

Sir:

I have your letter of February 2, 1915, with further reference to the trespassing of cattle on Indian land, and the right of this Department to collect trespass fees therefor. You allege that the Rosebud Agency officers have taken up cattle which were not on Indian land, and have collected \$1 per head trespass fee.

If you will submit affidavits from the homesteaders interested and from others having knowledge of the facts, that the agency officials have taken up cattle and held them until the \$1.00 per head trespass fee was paid, I will have the matter investigated and will see that the rights of the homesteaders are fully protected so far as the actions of the employes of the Indian Service are concerned.

As to your complaint that the Indians are taking advantage of state laws, organizing school districts and providing for issuing school bonds, erecting school houses, employing teachers, etc., for which their lands cannot be taxed, you are advised that

this is a matter which seems to be under the control of the State authorities. The Office, however, has been encouraging Indians generally to send their children to the local schools, and to take an interest in school matters.

Respectfully,
(Signed) Cato Sells
Commissioner.

[#511]

(Text and legislative history of H. R. 12082 plus letters concerning this bill which authorizes the sale of land in South Dakota for cemetery purposes)

[Act of March 3, 1919, Public No. 338, 40 Stat. 1320]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to sell and convey to the White River Cemetery Company, for cemetery purposes, for a price not less than the appraised value thereof, a ten-acre tract within the former Rosebud Indian Reservation in Mellette County, South Dakota, described as the northeast quarter of the southeast quarter of the northeast quarter of section thirty-four, township forty-two north, range twenty-nine west, sixth principal meridian, or such part thereof as may be required: *Provided, however,* That the tract conveyed shall be described in terms of the legal survey, the consideration to be paid to the superintendent of the Rosebud Reservation, to be deposited in the Treasury of the United States to the credit of the Rosebud Indians.

Approved, March 3, 1919.

[56 Cong. Rec. 9490 (1918)]

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to

the Clerk, and referred to the several calendars therein named, as follows.

Mr. GANDY, from the Committee on Indian Affairs, to which was referred the bill (H. R. 12082) authorizing the sale of certain lands in South Dakota for cemetery purposes, reported the same without amendment, accompanied by a report (No. 742), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

[57 Cong. Rec. 1838-1839 (1919)]

LANDS IN SOUTH DAKOTA FOR CEMETERY PURPOSES

The next business on the Calendar for Unanimous Consent was the bill (H. R. 12082) authorizing the sale of certain lands in South Dakota for cemetery purposes.

The SPEAKER. Is there objection to the consideration of the bill?

Mr. STAFFORD. Reserving the right to object, what is the special need of having this authorization when the department has authority to grant the right to certain classes of associations?

Mr. GANDY. The Secretary decided that under the construction of the act he did not have authority to sell for cemetery purposes, and I may say that was ascertained after that land had been, as it is now being used, for cemetery purposes.

Mr. STAFFORD. The land is now being used for cemetery purposes?

Mr. GANDY. Yes.

Mr. STAFFORD. I withdraw the reservation of the point of order.

The SPEAKER pro tempore. Is there objection? [After a pause.] The Chair hears none. This bill is on the Union Calendar.

Mr. GANDY. Mr. Speaker, I ask unanimous consent to have the bill considered in the House as in the Committee of the Whole.

The SPEAKER. The gentleman asks unanimous consent to have the bill considered in the House as in the Committee of the Whole. Is there objection? [After a pause.] The Chair hears none. The Clerk will report the bill.

The Clerk read the bill, as follows:

Be it enacted, etc., That the Secretary of the Interior is hereby authorized to sell and convey to the White River Cemetery Co., for cemetery purposes, for a price not less than the appraised value thereof, a 10-acre tract within the former Rosebud Indian Reservation in Mellette County, S. Dak., described as the northeast quarter of the southeast quarter of the northeast quarter of section 34, township 42 north, range 29 west, sixth principal meridian, or such part thereof as may be required: *Provided, however,* That the tract conveyed shall be described in terms of the legal survey, the consideration to be paid to the superintendent of the Rosebud Reservation, to be deposited in the Treasury of the United States to the credit of the Rosebud Indians.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

On motion of Mr. Gandy, a motion to reconsider the vote by which the bill was passed was laid on the table.

[57 Cong. Rec. 4784 (1919)]

LANDS IN SOUTH DAKOTA.

The bill (H. R. 12082) authorizing the sale of certain lands in South Dakota for cemetery purposes was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

[#51A]

(House report to accompany H. R. 12082 plus a copy of the bill)

[H. R. Rep. No. 742, 65th Cong. 2d Sess. 1-2 (1918)]

SALE OF CERTAIN LANDS IN SOUTH DAKOTA FOR CEMETERY PURPOSES.

July 5, 1918.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Gandy, from the Committee on Indian Affairs, submitted the following

R E P O R T .

[To accompany H. R. 12082.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 12082) authorizing the sale of certain lands in South Dakota for cemetery purposes, having considered the same, report thereon with a recommendation that it do pass.

This is a bill to authorize the sale of 10 acres of tribal land on Rosebud Indian Reservation in Mellette County, S. Dak., and belonging to the Rosebud Tribe of Indians, to the White River Cemetery Co. This 10-acre tract is situated near the county seat town of White River and among the citizens of that town the

White River Cemetery Co. was legally incorporated in order that the laws of South Dakota relating to cemeteries might be complied with and a legal corporation be in existence to receive and hold title to this land. It is provided that the Secretary of the Interior shall sell the land at not less than appraised value thereof and that the money received shall be deposited in the Treasury of the United States to the credit of the Rosebud Tribe of Indians.

Department of the Interior,
Washington, June 7, 1918.

Hon. Charles D. Carter.
Chairman Committee on Indian Affairs,
House of Representatives.

My Dear Mr. Carter: I am in receipt of your letter of May 14, 1918, inclosing for report H. R. 12082, a bill authorizing the sale of certain lands in South Dakota for cemetery purposes, and in response thereto I have the honor to submit the following:

The bill proposes to convey for cemetery purposes a 10-acre tract within the former Rosebud Indian Reservation in Mellette County, S. Dak., described as the NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of sec. 34, T. 42 N., R. 29 W., sixth principal meridian, "or such part thereof as may be required." It appears from the tract book in the General Land Office that the E. $\frac{1}{2}$ NE. $\frac{1}{4}$, with other lands in said section, are subject to a public highway application filed under section 4 of the act of March 3, 1901 (31 Stat., 1084), the map of which was approved December 23, 1913. Said land was opened to settle-

ment and entry under the act of May 30, 1910 (36 Stat., 448) which provides that the proceeds of the sale of the lands in said former Indian reservation shall be deposited to the credit of the Indians thereof and that the disposal of the land by the United States shall be in trust for their benefit.

It is provided in the act of March 1, 1907 (34 Stat., 1052) that religious, fraternal, or cemetery associations may apply for not to exceed 80 acres of any unappropriated, nonmineral public lands of the United States for cemetery purposes "provided that title to any land disposed of under the provisions of this act shall revert to the United States should the land or any part thereof be sold or cease to be used for the purpose herein provided." I am therefore of the opinion that the bill should be amended to include such a proviso, and that the purchase price be paid to the receiver of the land office.

I therefore recommend that the bill be amended by striking out of line 11, on page 1, after the word "required," the colon and the words "*Provided, however,*" and by striking out all of lines 12 and 13 on page 1, and all of line 1 on page 2 down to and including the word "Reservation," and by inserting in lieu thereof the words "the tract conveyed to be described in terms of the aliquot part of the section, the proceeds," and by attaching to the end thereof the following:

"*Provided*, That title to said land shall revert to the United States should the same or any part thereof be sold or cease to be used for the purpose herein provided."

When so amended, I see no objection to the enactment of the proposed legislation.

Cordially, yours, .

Alexander T. Vogelsang,
Acting Secretary.

[H. R. 12082, 65th Cong. 2d Sess. 1-2 (1918)]

H. R. 12082.

IN THE HOUSE OF REPRESENTATIVES.

May 13, 1918.

Mr. Gandy introduced the following bill; which was referred to the Committee on Indian Affairs and ordered to be printed.

A BILL

Authorizing the sale of certain lands in South Dakota for cemetery purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Secretary of the Interior is hereby authorized to
4 sell and convey to the White River Cemetery Company, for
5 cemetery purposes, for a price not less than the appraised
6 value thereof, a ten-acre tract within the former Rosebud
7 Indian Reservation in Mellette County, South Dakota,
8 described as the northeast quarter of the southeast quarter of

9 the northeast quarter of section thirty-four, township forty-
10 two north, range twenty-nine west, sixth principal meridian,
11 or such part thereof as may be required: *Provided, however,*
12 That the tract conveyed shall be described in terms of the
13 legal survey, the consideration to be paid to the superin-

1 tendent of the Rosebud Reservation, to be deposited in the
2 Treasury of the United States to the credit of the Rosebud
3 Indians.

H. R. 12082.

[Report No. 742.]

IN THE HOUSE OF REPRESENTATIVES.

May 13, 1918.

Mr. Gandy introduced the following bill; which was referred to the Committee on Indian Affairs and ordered to be printed.

July 5, 1918.

Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

1382

A BILL

Authorizing the sale of certain lands in
South Dakota for cemetery purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Secretary of the Interior is hereby authorized to
4 sell and convey to the White River Cemetery Company, for
5 cemetery purposes, for a price not less than the appraised
6 value thereof, a ten-acre tract within the former Rosebud
7 Indian Reservation in Mellette County, South Dakota, de-
8 scribed as the northeast quarter of the southeast quarter of
9 the northeast quarter of section thirty-four, township forty-
10 two north, range twenty-nine west, sixth principal meridian,
11 or such part thereof as may be required: *Provided, however,*

1 That the tract conveyed shall be described in terms of the
2 legal survey, the consideration to be paid to the superin-
3 tendent of the Rosebud Reservation, to be deposited in the
4 Treasury of the United States to the credit of the Rosebud
5 Indians.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INDIAN AFFAIRS,
WASHINGTON.

May fourteen,
Nineteen eighteen.

1383

Dear Sir:

Herewith I am transmitting copy of H.R. 12082 and
will appreciate having you submit a report thereon for
the use and information of this Committee.

Yours truly,
(Signed) C. D. Carter
Chairman

To the Honorable,
The Secretary of the Interior,
Washington, D.C.

DEPARTMENT OF THE INTERIOR
WASHINGTON

JUN - 7 1918

Hon. Charles D. Carter,
Chairman, Committee on Indian Affairs,
House of Representatives.

My dear Mr. Carter:

I am in receipt of your letter of May 14, 1918,
inclosing for report H. R. 12082, a Bill "Authorizing
the sale of certain lands in South Dakota for cemetery
purposes" and in response thereto I have the honor to
submit the following:

The bill proposes to convey for cemetery purposes a
ten acre tract within the former Rosebud Indian Reser-
vation in Mellette County, South Dakota, described as
the NE¼ SE¼ NE¼ of Sec. 34, T. 42 N., R. 29 W., 6th

Principal Meridian, "or such part thereof as may be required". It appears from the tract book in the General Land Office that the E $\frac{1}{4}$ NE $\frac{1}{4}$, with other lands in said section, are subject to a public highway application filed under Section 4 of the act of March 3, 1901 (31 Stat., 1084), the map of which was approved December 23, 1913. Said land was opened to settlement and entry under the act of May 30, 1910 (35 Stat., 448) which provides that the proceeds of the sale of the lands in said former Indian Reservation shall be deposited to the credit of the Indians thereof and that the disposal of the land by the United States shall be in trust for their benefit.

It is provided in the act of March 1, 1907, (34 Stat., 1052), that religious, fraternal or cemetery associations may apply for not to exceed 80 acres of any unappropriated, non-mineral public lands of the United States for cemetery purposes "provided that title to any land disposed of under the provisions of this act shall revert to the United States should the land or any part thereof be sold or cease to be used for the purpose herein provided." I am therefore of the opinion that the bill should be amended to include such a proviso, and that the purchase price be paid to the Receiver of the land office.

I therefore recommend that the bill be amended by striking out of line 11 on page one, after the word "required," the colon and the words "Provided, however," and by striking out all of lines 12 and 13 on page one, and all of line 1 on page two down to and including the word "Reservation," and by inserting in lieu thereof the words "the tract conveyed to be described in terms of the aliquot part of the section, the proceeds," and by attaching to the end thereof the following: "Provided, That title to said land shall revert

to the United States should the same or any part thereof be sold or cease to be used for the purpose herein provided." When so amended, I see no objection to the enactment of the proposed legislation.

Cordially yours,

(Signed) ALEXANDER T.
VOGELSANG,
Acting Secretary.

DEPARTMENT OF THE INTERIOR
WASHINGTON

MAR - 2 1919

My dear Mr. President:

I am in receipt, by your reference of March 3, 1919, of Enrolled Bill (H. R. 12082) entitled "An act authorizing the sale of certain lands in South Dakota for cemetery purposes", and have the honor to report that there is no objection to the approval of the Bill.

Cordially yours,

(Sgd.) Franklin K. Lane

The President,
The White House.

Inclosure +8154.

To Secretary
MAR 3 1919
For signature

[#51B]

(Senate report to accompany H. R. 12082 plus
a copy of the bill)

[S. Rep. No. 745, 65th Cong. 3d Sess. 1-2 (1919)]

Report No. 745.

SALE OF CERTAIN LANDS IN SOUTH DAKOTA FOR
CEMETERY PURPOSES.

February 20, 1919.—Ordered to be printed.

Mr. Myers, from the Committee on Public Lands,
submitted the following

R E P O R T .

[To accompany H. R. 12082.]

The Committee on Public Lands, to which was referred the bill (H. R. 12082) authorizing the sale of certain lands in South Dakota for cemetery purposes, having had the same under consideration, begs leave to report it back to the Senate with the recommendation that the bill do pass.

The necessity for this legislation is clearly set forth in the House Report No. 742 of the Sixty-fifth Congress, as follows:

This is a bill to authorize the sale of 10 acres of tribal land on Rosebud Indian Reservation in

Mellette County, S. Dak., and belonging to the Rosebud Tribe of Indians, to the White River Cemetery Co. This 10-acre tract is situated near the county seat town of White River and among the citizens of that town the White River Cemetery Co. was legally incorporated in order that the laws of South Dakota relating to cemeteries might be complied with and a legal corporation be in existence to receive and hold the title to this land. It is provided that the Secretary of the Interior shall sell the land at not less than appraised value thereof and that the money received shall be deposited in the Treasury of the United States to the credit of the Rosebud Tribe of Indians.

Department of the Interior
Washington, June 7, 1918.

Hon. Charles D. Carter,
Chairman Committee on Indian Affairs,
House of Representatives.

My Dear Mr. Carter: I am in receipt of your letter of May 14, 1918, inclosing for report H. R. 12082, a bill authorizing the sale of certain lands in South Dakota for cemetery purposes, and in response thereto I have the honor to submit the following:

The bill proposes to convey for cemetery purposes a 10-acre tract within the former Rosebud Indian Reservation in Mellette County, S. Dak., described as the NE.¼ SE.¼ NE.¼ of sec. 34, T. 42 N., R. 29 W., sixth principal meridian, "or such part thereof as may be required." It appears from the tract book in the General Land Office that the E.½ NE.¼, with other lands in said section, are subject to a public highway

application filed under section 4 of the act of March 3, 1901 (31 Stat., 1084), the map of which was approved December 23, 1913. Said land was opened to settlement and entry under the act of May 30, 1910 (36 Stat., 448) which provides that the proceeds of the sale of the lands in said former Indian reservation shall be deposited to the credit of the Indians thereof and that the disposal of the land by the United States shall be in trust for their benefit.

It is provided in the act of March 1, 1907 (34 Stat., 1052), that religious, fraternal, or cemetery associations may apply for not to exceed 80 acres of any unappropriated, nonmineral public lands of the United States for cemetery purposes "provided that title to any land disposed of under the provisions of this act shall revert to the United States should the land or any part thereof be sold or cease to be used for the purpose herein provided." I am therefore of the opinion that the bill should be amended to include such a proviso, and that the purchase price be paid to the receiver of the land office.

I therefore recommend that the bill be amended by striking out of line 11, on page 1, after the word "required," the colon and the words "*Provided, however,*" and by striking out all of lines 12 and 13 on page 1, and all of line 1 on page 2 down to and including the word "Reservation," and by inserting in lieu thereof the words "the tract conveyed to be described in terms of the aliquot part of the section, the proceeds," and by attaching to the end thereof the following:

"*Provided*, That title to said land shall revert to the United States should the same or any part thereof be sold or cease to be used for the purpose herein provided."

When so amended, I see no objection to the enactment of the proposed legislation.

Cordially, yours,

Alexander T. Vogelsang,
Acting Secretary.

[H. R. 12082, 65th Cong. 3d Sess. 1-2 (1919)]

H. R. 12082.

IN THE SENATE OF THE UNITED STATES.

January 20 (calendar day, January 21), 1919.

Read twice and referred to the Committee on Public Lands.
Public Lands.

AN ACT

Authorizing the sale of certain lands in South
Dakota for cemetery purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled*
3 *that the Secretary* of the Interior is hereby authorized to
4 sell and convey to the White River Cemetery Company, for
5 cemetery purposes, for a price not less than the appraised
6 value thereof, a ten-acre tract within the former Rosebud

7 Indian Reservation in Mellette County, South Dakota, de-
 8 scribed as the northeast quarter of the southeast quarter of
 9 the northeast quarter of section thirty-four, township forty-
 10 two north, range twenty-nine west, sixth principal meridian,
 11 or such part thereof as may be required: *Provided, however,*
 12 That the tract conveyed shall be described in terms of the
 13 legal survey, the consideration to be paid to the superin-
 14 tendent of the Rosebud Reservation, to be deposited in the

1 Treasury of the United States to the credit of the Rosebud
 2 Indians.

Passed the House of Representatives January 20,
 1919.

Attest: SOUTH TRIMBLE,
 Clerk.

65th Congress, 3d Session

H. R. 12082.

[Report No. 745.]

IN THE SENATE OF THE UNITED STATES.

January 20 (calendar day, January 21), 1919.

Read twice and referred to the Committee on
 Public Lands.

February 20, 1919.

Reported by Mr. Myers, without amendment.

AN ACT

Authorizing the sale of certain lands in South
 Dakota for cemetery purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That the Secretary of the Interior is hereby authorized to
 4 sell and convey to the White River Cemetery Company, for
 5 cemetery purposes, for a price not less than the appraised
 6 value thereof, a ten-acre tract within the former Rosebud
 7 Indian Reservation in Mellette County, South Dakota, de-
 8 scribed as the northeast quarter of the southeast quarter of
 9 the northeast quarter of section thirty-four, township forty-
 10 two north, range twenty-nine west, sixth principal meridian,
 11 or such part thereof as may be required: *Provided, however,*
 12 That the tract conveyed shall be described in terms of the
 13 legal survey, the consideration to be paid to the superin-

1 tendent of the Rosebud Reservation, to be deposited in the
 2 Treasury of the United States to the credit of the Rosebud
 3 Indians.

Passed the House of Representatives January 20,
1919.

Attest:

SOUTH TRIMBLE,
Clerk.

(Excerpt from the report of the General Accounting
Office, filed July 12, 1934 in Court of Claims Docket
No. C-531.)

[1653] An examination of the township plats of survey and tract books on file in the General Land Office discloses that the area of the lands within the boundaries defined by Section 1 of the aforesaid act of March 2, 1907, was 1,083,680.11 acres * * * the status of which, as of June 30, 1925, was as follows:

		<i>Acres</i>
Total area affected by the act of March 2, 1907		<u>1,083,680.11</u>
Indian allotments (Sections 1 and 2 of said act)		406,081.75
Disposed of to entrymen		573,797.87
Disposed of by public sale		<u>37,516.38</u>
		611,314.25
State school lands:		
Sections 16 and 36 of each township (Section 6 of said act)	53,130.80	
Indemnity selections (Section 6 of said act)	<u>11,455.17</u>	64,585.97
Reserves:		
Missionary	205.00	
Agency	<u>412.44</u>	(a) 617.44
Town sites: (Section 4 of said act)		
Wamblee	160.00	
Wewela	160.00	
Minneota	320.00	
Witten	<u>320.00</u>	960.00
Vacant (subject to entry), as of June 30, 1925		<u>120.70</u>
		<u>1,083,680.11</u>

[#52]

(Excerpt from the report of the General Accounting Office filed July 12, 1934 in the Court of Claims Docket No. C-531)

[p. 1619] * * * the status of which, [lands allotted by Act of April 23, 1904] as of June 30, 1925, was as follows:

	Acres	Total
Total area of the Rosebud Reservation within Gregory County, South Dakota	521,512.56	
Area allotted to Indians	<u>104,267.94</u>	
Total area affected by the act of April 23, 1904		<u>417,244.62</u>
Disposed of to entrymen	334,601.61	
Sold at public sales	51,821.31	
Set aside for town sites	879.24	
State school lands:		
Sections 16 and 36 of each township (Sec. 4 of act)	22,903.84	
Indemnity selections (Sec. 4 of act)	6,520.00	
Reserves (Sec. 2 of act):		
Agency (a)	160.00	
Missionary (a)	198.62	
Land undisposed of on June 30, 1925	<u>160.00</u>	
		<u>417,244.62</u>

* * *

[#53]

(Excerpts from the Constitution of the Rosebud
Sioux Tribe)

PREAMBLE

* * *

Article I—Territory

The jurisdiction of the Rosebud Sioux Tribe of Indians shall extend to the territory within the original confines of the Rosebud Reservation boundaries as established by the act of March 2, 1889, and to such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

Article III—Governing Body

Section 1. The governing body of the Rosebud Sioux Tribe shall consist of a council known as the Rosebud Sioux Tribal Council.

Sec. 2. The council shall be elected for a term of two years, by secret ballot. Each community of the reservation, as follows, shall be entitled to representation on the tribal council, according to population, as hereinafter provided:

- | | |
|----------------|-------------------|
| 1. Antelope | 7. Grass Mountain |
| 2. Bad Nation | 8. He Dog |
| 3. Black Pipe | 9. Horse Creek |
| 4. Bull Creek | 10. Ideal |
| 5. Butte Creek | 11. Milk's Camp |
| 6. Corn Creek | |

- | | |
|-------------------|--------------------|
| 13. Parmelee | 18. Spring Creek |
| 14. Ring Thunder | 19. Swift Bear |
| 15. Rosebud | 20. Two Strike |
| 16. St. Francis | 21. Upper Cut Meat |
| 17. Soldier Creek | |

* * *

Sec. 4. Each recognized community shall elect representatives to the tribal council, in the proportion of one representative for each two hundred fifty (250) members or a remainder of more than one hundred twenty-five (125), provided that each recognized community shall be entitled to at least one representative.

Sec. 5. No person shall be a candidate for membership in the tribal or community council unless he shall be a resident member of the Rosebud Sioux Tribe and shall have been affiliated for a period of one year next preceding the election, with the community of his candidacy.

Sec. 6. Each community shall have power, by popular vote, to fill any vacancy which may occur in its representation on the tribal council.

* * *

Article VII—Adoption of Constitution and By-Laws

This constitution and by laws, when ratified by a majority of the qualified voters of the Rosebud Sioux Tribe voting at a special election called for the purpose by the Secretary of the Interior, provided that at least 30 percent of those entitled to vote shall vote in such election, shall be submitted to the Secretary of the

Interior, and, if approved, shall be effective from date of approval.

CERTIFICATION OF ADOPTION

Pursuant to an order, approved November 1, 1935, by the Secretary of the Interior, the attached constitution and by-laws were submitted for ratification to the members of the Rosebud Sioux Tribe of the Rosebud Reservation and were on November 23, 1935, duly approved by a vote of 992 for and 643 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (Public, No. 147, 74th Cong.).

George Kills In Sight,
Chairman of Election Board.

George Whirlwind Soldier.
Vice Chairman of Rosebud Sioux Tribal Council.

Wallace A. Murray,
Secretary of Rosebud Sioux Tribal Council.

W. O. Roberts,
Superintendent.

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached constitution and by-laws of the Rosebud Sioux Tribe.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of

the provisions of the said constitution and by-laws are hereby declared inapplicable to the Rosebud Sioux Tribe.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said constitution and by-laws.

Approval recommended December 16, 1935.

John Collier,

Commissioner of Indian Affairs.

Harold L. Ickes,
Secretary of the Interior.
[SEAL]

Washington, D.C., December 20, 1935.

[#54]

(Memorandum dated April 6, 1972 from the Field Solicitor, Aberdeen, S.D. to the Area Director, Aberdeen, BIA)

Subject: Boundaries of the Rosebud Indian Reservation
The Superintendent, Rosebud Agency, by his memorandum dated February 23, 1972, to you, has requested a formal opinion from this office on what portions of the original Rosebud Indian Reservation remain, that is, what are the present boundaries of the Rosebud Indian Reservation.

The Rosebud Indian Reservation was carved or set apart from the Great Sioux Reservation and was originally established as a separate reservation by the Act of March 2, 1889, 25 Stat. 388. In Section 2, the boundaries are described:

[Here is quoted the description as set out in the 1889 Act]

* * *

Reference is made to the case of *United States v. Celestine*, 215 U.S. 278, 30 S.Ct. 93, which declared the legal principle that:

"... when Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress."

Such legal principle was followed in the case of *Seymour v. Superintendent*, 368 U.S. 351, 82 S.Ct. 424, relative to the Colville Indian Reservation, and in the recent case of *City of New Town v. United States*,

454 F.2d 121 (January 17, 1972), relative to the Fort Berthold Indian Reservation. The latter case set forth three principles, viz., (1) when Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress, (2) the purpose to abrogate treaty rights of Indians is not to be lightly imputed to Congress, and (3) the opening of an Indian reservation for settlement by homesteading is not inconsistent with its continued existence as a reservation. With these principles in mind, a review must be made of the Acts of Congress which may be asserted to have diminished such Reservation.

The first subsequent statute would be the Act of April 23, 1904, 33 Stat. 256, which ratified and amended an agreement between the Rosebud Sioux Tribe and the United States wherein,

"The said Indians... do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota,..."

Significantly, Article V thereof reads as follows:

"It is understood that nothing in this agreement shall be construed to deprive the said Indian of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement."

Other articles provided for disposition of the ceded land to settlers under the provisions of the homestead and townsite laws, the payment of the proceeds to the Indians, the conveyance of sections 16 and 36 to the

State, and for proclamation of the President in re settlement and entry. In Section 6 are the words:

"...it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided."

A careful reading of such Act reveals that there is no statement re the diminishment of the Rosebud Indian Reservation or that the ceded area would be made a part of the public domain. The operative words of such Act in Section 1 appear to relate to the conveyance of land interests remaining unallotted and the balance of the Act sets forth the payment of the proceeds for such conveyance and the assurance of treaty rights.

The second subsequent statute would be the Act of March 2, 1907, 34 Stat. 1230, which authorized the sale and disposition of the surplus and unallotted lands in the Rosebud Indian Reservation, as follows:

"That the Secretary of the Interior be, and he is hereby, authorized and directed as hereinafter provided to sell and dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range twenty-five west of the sixth principle meridian, except such portions thereof as have been, or may hereafter be, allotted to Indians: ...".

Such Act is quite similar to the 1904 Act as to settlement and entry, payment of proceeds, and proclamation of the President. Significantly, it is therein stated:

"...it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay

over the proceeds received from the sale thereof only as received, as herein provided: Provided, That nothing in this Act shall be construed to deprive the said Indians of the Rosebud Reservation, in South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act."

Again, there is no statement re the diminishment of the Rosebud Indian Reservation or that the described area was made a part of the public domain. In Section 1, the operative words relate only to the sale and disposal of land and other sections set forth the details in re the price to be paid therefor, the payment of proceeds, and the grant of sections 16 and 36 to the State, and the assurance of treaty rights.

The third subsequent statute would be the Act of May 30, 1910, 36 Stat. 448, which authorized the sale and disposition of a portion of the surplus and unallotted lands in the Rosebud Indian Reservation, as follows:

"That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh, south of the White River, and ...", particularly described.

A casual reading of such Act might cause improper significance to be attached to the words "on the diminished reservation" appearing in the first proviso of Section 1 which secures to the Indians the right to receive "in lieu" allotments on the unceded portion of such Reservation. However, a careful reading would reveal the words "on said reservation" in the third proviso of Section 1, referring to land to be patented in

fee to the missionary board of a religious organization within the portion to be ceded, and in Section 2, the first proviso the statement: "Provided, That prior to said proclamation the allotments within the portion of the reservation to be disposed of as prescribed herein shall have been completed." In addition, in Section 4 appears a sentence: "The said commissioners shall then proceed to personally inspect, classify, and appraise, in one hundred and sixty acre tracts each, all of the remaining unallotted lands embraced within that portion of the reservation described in section one of this Act." Also by the second proviso in Section 4, all timber lands in such area were reserved for the Rosebud Indians.

Moreover, the final section of such Act declares:

"...it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: Provided, That nothing in this Act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act."

There is no specific statement in such Act that the Rosebud Indian Reservation was to be diminished or that the area described was to be made a part of the public domain. Again in such Act, as in the two previous Acts cited above, it appears that Congress intended to sell and dispose of surplus unallotted lands within reservation boundaries and covered necessary incidental matters such as sales price, grant of sections 16 and 36 to the State, and payment of proceeds to the Indians.

It should be noted that such Act was dated May 30, 1910, and that the Fort Berthold Act was dated June 1, 1910, 36 Stat. 455, which the Eighth Circuit Court of Appeals held it could find no clear intent by Congress to diminish that reservation. There are many similarities between such Acts, and nothing to indicate an intent that Congress intended either Reservation to be diminished or its boundaries changed. The Fort Berthold decision clearly indicates the intent of Congress at such time in history.

Subsequent Acts of Congress have been examined and as in *New Town v. United States*, several statutes made reference to lands in the "former" Rosebud Reservation, however, such Acts do not reveal an intention by Congress to diminish such Reservation, or change its boundaries, or declare that described territory should be added to the public domain.

The Solicitor's Opinion M-36802, dated March 13, 1970, construed the Act of June 1, 1910, 36 Stat. 455, and found no intent to diminish the boundaries of the Fort Berthold Reservation. Such opinion and its legal analysis of legal precedent therein cited are controlling here in view of Congressional intent expressed or absent from such Acts.

In my opinion, the three Acts of Congress cited above "...did no more than open the way for non-Indian settlers to own land on the reservation in a manner which the Federal Government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards..." as the court stated in *Seymour v. Superintendent*. Clearly revealing the intent of Congress, the title to the 1907 and 1910 Acts declared the purpose to be "To authorize the sale and disposition of a portion of the surplus and unallotted

lands . . .", and the provisions thereof set forth the necessary details at the same time reserving rights to the Indians to which they are entitled by treaty or agreement.

Accordingly, it is my opinion that pursuant to applicable legal principles, the legal boundaries of the Rosebud Indian Reservation have not been diminished or altered by Congress since the establishment of the original boundaries thereof by the Act of March 2, 1889, 25 Stat. 888, which are described above.

Wallace G. Dunker
Wallace G. Dunker
Field Solicitor

cc: Mr. Jess T. Town, Superintendent, Rosebud Agency,
Rosebud, South Dakota 57570

Mr. Richard Smith, Legal Services, P. O. Box 227,
Rosebud, South Dakota 57570

[#55]

(Letter dated August 23, 1974 from the Acting Area Director, Aberdeen, S.D. BIA to Neil Proto, Esquire, Department of Justice)

This is in response to your telephone request for a comprehensive report on the services which the Bureau of Indian Affairs provides to the Indian residents of Mellette, Tripp, Gregory, and Lyman Counties of the Rosebud Reservation.

We understand that your Department is interested in securing information which will establish the fact that the Bureau of Indian Affairs provides the same services for the Indian residents of Mellette, Tripp, Gregory, and Lyman Counties as it does for the Indians residing in Todd County. This Bureau, through the Rosebud Agency, has for many years considered the residents of the reservation to include those Indians who reside in the five counties within the exterior boundaries of the reservation as established by the Act of March 2, 1889. (25 Stat. 888)

Attached please note documents which provide information concerning the Indian population of the Rosebud Reservation. The Rosebud Sioux Tribe census which was accomplished by the Tribe reflects a total on-reservation population of 7,101 Indians. There is no attempt on the part of the Tribe to distinguish residence by county. The Bureau of Indian Affairs annually bases its appropriation requests upon the number of Indians residing on and near the reservation. The following indicates the number of Indians considered in the

appropriation requests for fiscal years 1969 through 1974:

Fiscal Year	On	Near
1969	6715	484
1970	6986	83
1971	7306	97
1972	7385	103
1973	7431	107
1974	7558	113

The 1970 United States Census reflects the following Indian residents of the five counties of the Rosebud Reservation:

Todd	4,600
Mellette	822
Gregory	318
Tripp	501
Lyman	<u>588</u>
Total	6,829

The Indian population as reflected in the Bureau of Indian Affairs Labor Force Report of March 1973 totals 7,538. We realize that the population figures noted above are not identical. However, they do indicate that the total Indian population of the Rosebud Reservation is considered in funding requests for Bureau of Indian Affairs services.

We have attached several other documents which indicate the Bureau services which are provided to Indian residents of the four counties in question. We regret that it is not possible to provide specific information on the number of Indians residing in the four county area

who receive Bureau services. The activity reports are, however, indicative of the services which are provided and we must emphasize that similar services are provided to the residents of Todd County.

The accompanying social services assistance report indicates the number of families and persons provided services but does not identify the kind of service provided. The Bureau of Indian Affairs through its social services program provides financial assistance to needy Indians residing on the reservation who are not recipients of assistance through other public welfare programs. In addition to the extension of financial assistance, the Bureau, through its social services program, provides child welfare services, related counseling services, burial assistance, and eligibility services for donated food commodities.

With regard to realty services described in the attachments, all services are extended to all counties where there are trust resources. The activity of land operations maintains conservationists and appraisers at Mission, South Dakota, who serve the entire reservation area.

To further clarify the services extended by the Bureau of Indian Affairs, the Milk's Camp community located in Gregory County near St. Charles and Bonesteel, South Dakota, is noted. This isolated community has received cluster-type housing which is located on trust land. The children of this community attend the Todd County School at Mission, South Dakota, or the school at Bonesteel, South Dakota. The Bonesteel Public School receives Johnson O'Malley funds for the Indian students. The Bureau of Indian Affairs Roads department maintains a bulldozer in the community to provide for some road work. The residents of the com-

munity have also requested that a resident policeman be stationed in their community.

The recent ruling by Judge Andrew Bogue which indicates that the State of South Dakota has jurisdiction over Indians residing in the four county area has made it necessary for our law enforcement services to be curtailed pending an outcome of the appeal. Prior to this decision the Bureau of Indian Affairs did attempt to provide law enforcement services to the four county area as it does in Todd County.

Information available to us through the Indian Health Service indicates that they hold outpatient clinics at Winner, South Dakota, in Tripp County, and at White River and Norris in Mellette County, for Indian residents of the area. Home visits are made to patients in the four-county area by Community Health Representatives and a mobile unit is being readied to serve in the distant reservation communities.

We trust that the above information and attached documents will be of assistance to you in this matter. Please be assured that the Bureau of Indian Affairs will continue to provide services to the Indian residents who reside within the exterior boundaries of the Reservation as established by the Act of March 2, 1889, unless the Bureau's authority to continue such services is curtailed by the Administration or by Congress.

Sincerely yours,

[Inelligible.]

Acting Area Director

Enclosures 18

[#56]

The following excerpts are from instruments found in the National Archives, Record Group N.75, Central Files, 1907-1921, Bureau of Indian Affairs (Note: "CIA" is Commissioner of Indian Affairs)

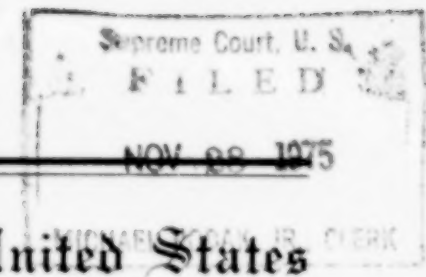
1. Report, June 1, 1908, Agent to CIA, p. 1—"Most of the month of May I spent on the Rosebud reservation visiting the Indians of the Butte Creek and Big White River districts ***." [Butte Creek and Big White River are in Mellette and Tripp counties respectively].***
 "There are a number of Indians on the Rosebud reservation and particularly in the Butte Creek district that have land under cultivation ***."
2. Letter, January 18, 1910, from CIA approving request to paint Black Pipe Day School in Mellette County.
3. Letter, May 26, 1910, Superintendent to CIA re "moving the Big White River Issue Station [Tripp County ****] to the center of the Big White River district [Tripp County]. " 'The Big White River issue station has heretofore been located in the extreme northeastern corner of the district, which is approximately 30 x 36 miles. *** It is desired to move the station about 20 miles to the southwest as soon as suitable reservation can be made. This will put the farmer very close to the geographical center of his district and within easy reach of all of his Indians.' "
4. Letter, January 12, 1911, CIA to Superintendent re Improvements at the "Big White River Day School" [Tripp County].
5. Telegram, December 15, 1911, CIA to Indian School granting authority for 20 windows at "Ponca

- Creek day school". [Gregory County]
6. Petition, April 1912, "Indian allottees of the Butte Creek District, Rosebud Reservation" for a doctor to be located "near the centre of our district" [Butte Creek, Mellette County]. A reference is made to the Agency physician [Todd County] "having all he can do on that part of the Reservation."
 7. Letter, June 15, 1912, CIA to Indian Mission granting permission "for the erection of a chapel on the Bull Creek Day School Reserve on the Rosebud Indian Reservation". [Tripp County]
 8. Petition, March 1913 by 55 Indians requesting CIA to "establish a boarding school in the Western end of this Rosebud Reservation, on the Black Pipe Issue Station Reserve." [Mellette County]
 9. Letter, March 11, 1913, from CIA, p. 1 in response to Item 8—re "petition asking that a boarding school be established at the western end of the Rosebud Reservation" in the Corn Creek District. [Mellette County]
 10. Letter, May 10, 1913, Superintendent to CIA, report on farming operations "relative to the way our Indians are supported at the present time on the reservation. *** I do not believe there was ever as much farming done on this Rosebud Reservation by the Indians, as was done last year." (p. 1) "I have instructed the Farmers in every District to drop everything for one whole month and to get out with the Indians ***." (p. 3) "We have as good farms in Gregory County, as any in South Dakota, and many of the Indians are this year, individually cultivating from three to four hundred acres, and are as good farmers as their white neighbors." (p. 4)

11. Voucher, September 11, 1913, for wells at Little White River, Pine Creek, Whirlwind Soldier and Black Pipe Day Schools, all in Mellette County.
12. Letter, September 23, 1914, CIA to Supervisor, concerning the "proposed transfer of the Big White River District to your reservation to the Lower Brule Jurisdiction". [Tripp County] Advising that funds will be provided for a "new issue station in the Big White River District with a view to administering the affairs of the Indians in that territory more efficiently." [Tripp County]
13. Letter, September 30, 1914, Supervisor to CIA re construction of a "barn for the Butte Creek farmer station". [Mellette County]
14. Voucher, December 8, 1914, for a well at "Little Crow Day School, Rosebud Reservation". [Mellette County]
15. Voucher, December 21, 1914, for a well at "Whirlwind Soldier Day School, Rosebud Reservation". [Mellette County]
16. Invoice, June 23, 1915, for construction of "Office and warehouse at the Ponca Indian Day School *** Gregory County."
17. Report, May 3, 1916, Supervising Superintendent to CIA re "visiting two of the day schools on the Rosebud reservation", naming "Bull Creek Day School" (p. 1) [Tripp County] and "Milks' Camp Day School" (p. 2) [Gregory County]
18. Letter, June 1, 1916, Supervisor to CIA re erection of school for the "new Butte Creek Day School Camp" [Mellette County].
19. Letter, June 29, 1916, Supervisor to CIA, re "Corn Creek Day School". [Mellette County] Reference is made to "Indian families living between this school and the Northern boundary of the Reservation"

referring to the northern boundary of Mellette County.

20. Report, June 30, 1916, Day School Inspector to Supervisor re "Whirlwind Soldier Day School" [Mellette County].
 21. Report, June 30, 1916, Supervisor to CIA re "White Thunder Day School" [Mellette County].
 22. Letter, September 18, 1919, CIA to Supervisor concerning removal of "old slaughter-house located about half a mile from the Ponca farm station ***" to the "Ponca farm station" [Gregory County].
 23. Letter, November 18, 1920, Superintendent to CIA, request for authority to remove "grandstand erected on the Ponca Creek substation grounds for the 4th of July celebration". [Gregory County]
 24. Letter, June 13, 1921, re payment of expenditures "by Boss Farmer at the Ponca Indian School in this [Gregory] County ***."
-



IN THE
Supreme Court of the United States
October Term, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

William J. Janklow
Attorney General
State of South Dakota
Capitol Building
Pierre, South Dakota 57501

William F. Day, Jr.
Attorney for the Four Counties
Fifth and Main Street
Winner, South Dakota 57580

Tom D. Tobin
Special Assistant Attorney General
422 Main Street
Winner, South Dakota 57580

Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF CITATIONS	i
JURISDICTION	1
QUESTION PRESENTED	2
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	7
ARGUMENT	9
 I. THE DECISION BELOW FITS SQUARELY WITHIN THE HISTORICAL CIRCUMSTANCES THIS COURT SET FORTH IN <i>DECOTEAU V.</i> <i>DISTRICT COUNTY COURT</i> , 420 U.S. 425 (1975)	 9
A. The General Allotment Act of 1887	9
B. <i>DeCoteau v. District County Court</i> , 420 U.S. 425 (1975)	13
C. Rosebud Legislation	17
1. The Act of April 23, 1904, Gregory and Lyman County, South Dakota	17
2. The Act of March 2, 1907, Tripp County, South Dakota	25
3. The Act of May 30, 1910, Mellette County, South Dakota	28
4. The Todd County Documents	30
 II. THE PETITION DOES NOT PRESENT A QUESTION WORTHY OF THE DISCRETIONARY JURISDICTION OF THIS COURT	 35
A. The Decision Below Does Not Present A Question Of Broad General Importance In Indian Law ...	35
B. The Decision Below Is Not In Conflict With The Decisions Of This Court	42
C. The Decision Below Is Not In Conflict With Any Decision Of The Supreme Court Of The State Of South Dakota	44
D. The Decision Below Is Not In Conflict With Any Decision Of Any Circuit Court Of Appeals	45
E. The Decision Below Is Clearly Correct	46
 CONCLUSION	 50
APPENDIX A	

TABLE OF CITATIONS

CASES:

Ash Sheep Co. v. United States, 252 U.S. 159 (1920)	43, 44
--	--------

Beardslee v. United States, 387 F.2d 280 (CA 8 1967)	38, 39
DeCoteau v. District County Court, 420 U.S. 425 (1975)	passim
Lone Wolf v. Hitchcock, 187 U.S. 553 (1903)	24, 25, 27, 47
Mattiz v. Arnett, 412 U.S. 481 (1973)	4, 35, 40, 42, 45, 46
Rosebud Sioux Tribe v. Kneip, et al., 375 F. Supp. 1065 (D.S.D. 1974)	passim
Rosebud Sioux Tribe v. Kneip, et al., (CA8, filed July 16, 1975)	passim
Seymour v. Superintendent, 368 U.S. 351 (1962)	4, 40, 42, 45, 46
State of South Dakota v. White Horse, No. 11319-a-JMD (decided August 1, 1975)	44, 45
United States ex rel. Cook v. Parkinson, No. 75-1306 (CA 8, filed Oct. 29, 1975)	45
United States v. Pelican, 232 U.S. 442 (1914)	39
United States v. Washington, 496 F.2d 620 (CA 9, 1974) cert. den. 419 U.S. 1032	45

TREATIES AND STATUTES:

Act of February 8, 1887, 24 Stat. 388 (1887) (General Allotment Act)	passim
Act of March 2, 1889, 25 Stat. 888	2, 17, 18
Act of March 3, 1891, 26 Stat. 1035	7, 15, 16
Act of April 23, 1904, 33 Stat. 254	passim

Act of April 27, 1904, 33 Stat. 352	44
Act of March 2, 1907, 34 Stat. 1230	passim
Act of May 30, 1910, 36 Stat. 443	passim
18 U.S.C. 1151(c)	38
MISCELLANEOUS AUTHORITIES:	
Letter from Acting Commissioner of Indian Affairs to W. W. Rankin, March 24, 1909	31
Letter from Congressman Burke to R. A. Ballinger, Secretary of the Interior, June 9, 1909	29
Letter from F. E. Leupp, Commissioner of Indian Affairs to the Secretary of the Interior, December 15, 1906	27
Letter from Senator Gamble to the Secretary of the Interior, April 12, 1911	32
Proclamation of the President, April 11, 1892, 27 Stat. 1017	16
Proclamation of the President, May 13, 1904, 33 Stat. 254	23
Proclamation of the President, August 24, 1908, 35 Stat. 2203	28
Proclamation of the President, June 29, 1911, 37 Stat. 1691	29
Report of the Commissioner of Indian Affairs (1892)	10
Todd County Tribune, Vol. 55, No. 44, August 21, 1975	41
II Indian Law Reporter 3	40, 41

IN THE
Supreme Court of the United States

October Term, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents adopt, for the purpose of this Brief in Opposition, the material in the Petition under the headings of "OPINIONS BELOW" and "STATUTES INVOLVED."

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition with the exception that the Petition, contrary to Rule 23(1)(a)ii and 23(1)(j), neglects to mention or append the order of the court of appeals respecting a rehearing. A motion for leave to file an enlarged petition for rehearing en banc out of time was considered by the court of appeals and denied on September 16, 1975. The order of the court of appeals appears at Appendix A, *infra*.

QUESTION PRESENTED

Whether three surplus land statutes enacted pursuant to what was in essence Section 5 of the General Allotment Act of 1887 were intended by Congress and understood by the members of the Rosebud Sioux Tribe to disestablish certain portions of the original Rosebud Reservation.

STATEMENT OF THE CASE

On July 30, 1972, the Rosebud Sioux Tribe filed this declaratory judgment action requesting the United States District Court for the District of South Dakota, Western Division, to declare that three surplus land statutes enacted pursuant to the General Allotment Act were not intended by Congress to diminish the territory of the Rosebud Reservation from that originally defined in the Act of March 2, 1889. The issue was extensively and thoroughly researched and briefed by all parties. Approximately 200 pages of briefs and appendices were eventually submitted. Nineteen months later, on February 7, 1974, the district court issued a 53-page carefully considered memorandum opinion.

In the opinion, the court set forth at length the language, legislative history and the surrounding circumstances of the three Acts in support of its decision that the materials all pointed unmistakably to the conclusion that the three Acts were intended by Congress to have an effect on certain portions of the reservation similar to that later found by this Court in *DeCoteau v. District County Court*, 420 U.S. 425 (1975). The reservation nature of the portions of the original reservation affected by the three surplus land statutes, namely, parts of the counties of Gregory and Lyman, South Dakota (1904 Act), the entire county of Tripp, South Dakota (1907 Act), and the county of Mellette, South Dakota (1910 Act), was effectively disestablished. The court further noted that the area unaffected by any of the Acts, a tract known as Todd County, South Dakota, remained intact and the present boundaries of the Rosebud Reservation encompassed the same.

In short, the court found that as an end result of the decade of legislation, the Tribe and the Government spoke clearly. They had agreed to a process that "carved out a diminished reservation" in addition to the retained allotments in the counties in question. *DeCoteau, supra* at 447. This was a fact situation later specifically recognized by this Court in *DeCoteau, DeCoteau, supra* at 447.

The decision of the district court was in conformity with over sixty-five years of state and federal precedent. Thus, as in *DeCoteau*, the decision of the district court did not alter the status quo. *DeCoteau, supra* at 449. The district court concluded:

certainly this is the treatment that has been accorded those counties from the time of the acts' passage on. There is no dispute but that the State of South Dakota has treated the counties of Mellette, Tripp, Gregory and what was at that time Lyman County, as portions of the state over which the State of South Dakota can exercise jurisdiction since the passage of those acts. Pet. App. B at 109.

On March 13, 1974, the Rosebud Sioux Tribe appealed the decision of the district court to the Eighth Circuit Court of Appeals. A total of approximately 600 pages of briefs and appendices were filed by counsel for Petitioner and by the United States as *Amicus Curiae* in support of the arguments of the Rosebud Sioux Tribe. At oral argument on September 12, 1974, the panel below indicated that it was reluctant to decide the issue until this Court decided the then-pending *DeCoteau* case.

As a result, no further action was taken on the issue until March 12, 1975, when the court of appeals requested a supplementary brief from each of the parties directed to the applicability and effect of the *DeCoteau* decision. An additional 85 pages of supplementary briefs were then presented by counsel for Petitioner, the Government and counsel for Respondents.

On July 16, 1975, the Eighth Circuit Court of Appeals issued a 62-page opinion that also carefully analyzed all of the additional material and arguments. The language, the legislative history and surrounding circumstances of the three Acts in question were considered in light of the guidance of *Seymour v. Superintendent*, 368 U.S. 351 (1962), *Mattz v. Arnett*, 412 U.S. 481 (1973), and most recently *DeCoteau*, *supra*. The court found that it was:

clear beyond reasonable question that the Acts were passed with the intent of doing away with the Reservation in those portions affected . . . the problems before Congress at the turn of the century with respect to the western lands permitted no easy solutions. The choices were difficult but they were made by the representatives of the people and it is not our function to fashion a wiser course under the guise of interpretation. Pet. App. A at 60-61.

At the outset, it was again noted that the decision of the court only maintained the status quo for the reason that since the passage of the Acts in question, all interested parties had, as in *DeCoteau*, recognized the jurisdiction of the state therein. Pet. App. A at 3-4, n. 5.

After the decision was announced, counsel for Petitioner indicated to Respondents that for strategical reasons a petition for rehearing en banc would not be filed. Reportedly, the likelihood of this Court granting a Petition for Certiorari, which was soon to be filed in any event, would be increased if the Eighth Circuit Court of Appeals had not previously acted upon and denied a petition for a rehearing en banc. The denial of the rehearing petition was assumed on the strength of the opinion of the Eighth Circuit Court of Appeals. On July 31, 1975, the time for filing such a petition expired.

However, by September 3, 1975, some event must have caused a general change in philosophy. By letter of that date, the clerk of the Eighth Circuit Court of Appeals received a 110-page document from the Land and Natural Resources

Division of the Department of Justice that was to serve, among other purposes, as an enlarged brief for the Government as *Amicus Curiae* in support of Petitioner's request for a rehearing en banc. Six days later, on September 9, 1975, by way of a letter dated September 6, 1975, the clerk of the Eighth Circuit Court of Appeals received the motion of Petitioner for leave to file the accompanying enlarged petition for a rehearing en banc out of time. By order of the court dated September 16, 1975, the motion was denied. Contrary to Rule 23(1)(a)ii and Rule 23(1)(j) of this Court, no mention of these facts or orders appear anywhere in the Petition or in the Appendix.

Up to and including the date of the denial of the petition for rehearing en banc, the issue now presented in this Petition was before the district court and the court of appeals for consideration for over three years. Fourteen separate briefs, a total of 560 pages, and over 640 pages of appendices, were presented in support of the arguments of the respective parties. Both courts unequivocally, in well-reasoned and well-documented opinions, found the position of Petitioner and the Government to be clearly untenable and contrary to the language, legislative history and surrounding circumstances of the Acts in question.

The majority of the affirmative arguments of Petitioner and the Government, although sophisticated, were variously treated and described by the courts below as:

. . . not in point . . . misapprehends the applicable criteria . . . inconclusive and unpersuasive . . . cannot accept . . . nowhere do we find, in the legislative history or materials from the period, any indication in substantial support . . . we cannot ignore the legislative history . . . the argument made will not withstand analysis in light of the realities of the situation confronting the Congress at the time . . . the record is barren of any disclosed intention thereby to preserve intact the area of the original reservation and its boundaries. Such an intention is

utterly foreign to the entire tenor of the contemporary materials before us . . . the argument stems from a misinterpretation of legislative history Pet. App. B at 83. Pet. App. A at 6, 8 n. 8, 15 n. 21, 26, 30, 31, 33, 42, 54.

In other instances, the courts below simply noted "no explanation" whatsoever was even "offered" by the Petitioner or the Government on crucial points such as why the Senate and House Reports and the sponsors of the legislation would in 1910 and 1911 describe the Rosebud Reservation as being "*diminished*," containing "*one million acres of land*," and "*lying wholly within the boundaries of Todd County, South Dakota*," if the original 1889 boundaries, which contained over three million acres of land and encompassed most of the five separate counties, were still intact as the Tribe and the Government nevertheless maintained. Pet. App. A at 51.

Significantly, the position of Petitioner before this Court remains the same. There is nothing in the Petition that was not presented and rejected by both courts below. Petitioner does not even assert that one new argument or material revelation has surfaced subsequent to the decisions of the courts below. Nor does this Petition offer this Court the heretofore conspicuously absent alternative constructions to the over forty separate and unequivocal references in the language, legislative history and surrounding circumstances of the Rosebud Acts that effectively undermine the crux of the theory upon which the Position of Petitioner is founded. Quite simply, the position of Petitioner is that after three years and 1200 pages of documentation and argument, both courts below were for some reason incapable of accurately ascertaining the intent of Congress and the understanding of the Rosebud Sioux Tribe.

Although this position is clearly untenable, Respondents will not attempt, within the confines of this Brief, to once again set forth the language of the documents to refute each and every argument that is once again presented in the Peti-

tion. Nor will Respondents quote in length the same unequivocal references yet to be addressed by Petitioner that were deemed extremely significant by the courts below. On these points, Respondents will rely solely upon the persuasiveness of the opinions below, both of which set forth the substance of the documents as clearly and concisely as it was possible to do in a written opinion.

Insofar as the facts of the case are concerned, Respondents will simply rely on the following summary of the historical climate in which the Rosebud legislation was proposed — a summary that reveals unequivocally and without reservation that the Rosebud legislation fits squarely within the same historical circumstances and congressional intent that this Court found to exist in *DeCoteau*. Petitioner has elected to set forth another version of the context in which the Rosebud legislation was enacted within a sixteen-page "Statement of Facts." Pet. at 2-17. Because Respondents find it difficult to address the position of Petitioner within what might properly be deemed a statement of facts, the entire sequence *infra* is presented under the first subheading of Argument.

SUMMARY OF ARGUMENT

The language, legislative history and surrounding circumstances of the three Rosebud Acts fit squarely within the historical circumstances this Court set forth in *DeCoteau*. Since the opinions of the district court and the court of appeals more than adequately set forth the specific evidence of congressional intent, Respondents have concentrated on the historical circumstances of the General Allotment Act of 1887, the 1891 Act construed in *DeCoteau*, and the Rosebud legislation. Respondents submit that this documentation establishes that in all respects the Rosebud legislation clearly represents a continuation of the same basic congressional policy noted in *DeCoteau*.

As in *DeCoteau*, all three Rosebud Acts are surplus land statutes enacted pursuant to what was in essence Section 5 of

the General Allotment Act. As in *DeCoteau*, a majority of the adult male members of the tribe consented to what was aptly described throughout the documents as a "cession" of the surplus unallotted land. The earliest Rosebud negotiations were also for a certain sum. However, the later negotiations were for an uncertain sum. Congress no longer favored direct appropriations to pay for the surplus area ceded. In these later negotiations, the total sum to be held in trust by the Government for the benefit of the tribe was dependent upon the number of homesteaders that would file on the surplus land. In all respects, the Rosebud documents show that the intent of Congress and the understanding of the Rosebud Sioux Tribe remained the same. Each Act was intended to disestablish a portion of the Rosebud Reservation. The court below held that the boundaries of the original Rosebud Reservation were thus diminished to encompass Todd County, South Dakota.

The decision below simply maintains the status quo. The other counties have not been considered to be within the boundaries of the original Rosebud Reservation since the passage of the Acts. Only 10 percent of the resident population are enrolled members of the Rosebud Sioux Tribe and less than 15 percent of the land remains in trust. As in *DeCoteau*, Respondents have exercised unquestioned jurisdiction over the unallotted land of the former reservation in these counties for over 65 years.

The Petition does not assert one new argument or material revelation subsequent to the decisions below. Nor does the Petition offer this Court alternate constructions to the references in the language, legislative history and surrounding circumstances of the Rosebud Acts which clearly undermine the theory of Petitioner. Rather, the thrust of the Petition is simply that after three years of extensive research and briefing, both courts below were, for some unstated reason, incapable of accurately ascertaining the intent of Congress and the understanding of the Rosebud Sioux Tribe.

The decision below is in accordance with established state and federal precedent. It is not of broad general importance in Indian Law. Nor is it in conflict with any decision of this Court, any decision of any other circuit or any decision of the Supreme Court of the State of South Dakota. In short, it does not present a question worthy of the discretionary jurisdiction of this Court.

ARGUMENT

I

THE DECISION BELOW FITS SQUARELY WITHIN THE HISTORICAL CIRCUMSTANCES THIS COURT SET FORTH IN *DECOTEAU V. DISTRICT COUNTY COURT*, 420 U.S. 425 (1975).

A. The General Allotment Act of 1887. Before 1887 it was the fundamental precept and purpose of the Indian land cession policy that the ratification of a cession agreement would extinguish the Indians' claim or title to a given described area. If the ceded area, or area to be disestablished, included only a portion of the reservation, the boundaries would be diminished to include only the reduced area or reservation remaining. If the whole reservation was to be ceded or disestablished, the boundaries were still just as disestablished, and the tribes involved usually were required to remove to another reservation. In both instances the area so ceded was automatically restored to the public domain and later "opened" to homesteading. In this era the stated consideration was usually a direct per capita cash payment to the tribe or individual members thereof.

After 1887, through Section 5 of the General Allotment Act of 1887 and by tailoring cession agreements to conform thereto, Congress could and did effectively reduce the size of Indian reservations at a much more rapid pace than had theretofore been possible. The Commissioner of Indian Affairs addressed the issue at length in terms of letting "the

reservations, as speedily as wisdom dictates, be utterly destroyed and entirely swept away." Report of the Commissioner of Indian Affairs at 136 (1892). The Report stated that under Section 5 of the General Allotment Act "during the past three years more than 24,000,000 acres of Indian land have been restored to the public domain." Report of the Commissioner of Indian Affairs at 136 (1892). In two respects, however, the post 1887 legislation differed materially from the past.

Prior to enactment, the individual members of the tribes were assured under the General Allotment Act of individual acreages in the form of individual allotments. These allotments were pursuant to Section 5 of the General Allotment Act, as were the negotiations for the remainder or "surplus" lands. The term "surplus land statute" was used to describe the entire process subsequent to allotment. Secondly, those primarily responsible for the General Allotment Act professed sincere belief that the individual member of a tribe who had received an allotment, as well as the government, would be better off after a surplus land statute was enacted. The allotted member of the tribe would be exposed to "civilization" and this exposure was deemed a necessary step toward the status of citizenship. The sale of the surplus land would create a fund which would serve as a source of income for the allottee until that status could be fully obtained. Moreover, the government would at the same time be making available for cultivation vast tracts of land that had theretofore been lying idle. The allottee and the homesteader could both cultivate the land and, as a result, the entire country would thus be the beneficiary. In retrospect, both the goals of the act and some of the motives behind it may be questionable, but at the time it was wholeheartedly accepted in good faith by all.

For one concrete example of a surplus land statute enacted pursuant to Section 5 of the General Allotment Act, assume that a certain cession or sale for the entire eastern half of a

reservation was proposed in 1888, but only a certain percentage of the members of the tribe had as of that date received an allotment. If this proposal nevertheless met with the approval of the Commissioner of Indian Affairs, he would write the Secretary of the Interior and therein cite Section 5 of the General Allotment Act which provided:

And provided further, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to *negotiate* with such Indian tribe for the *purchase and release* by said tribe, in conformity with the treaty or statute under which such reservation is held, of *such portions of its reservation* not allotted as such tribe shall, from time to time, consent to *sell*, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which *purchase* shall not be complete until ratified by Congress, . . . Act of February 8, 1887, 24 Stat. 389-390 (emphasis added).

Paraphrased for the purpose of the hypothetical example, this section would allow the Secretary to negotiate for the release of "such portions" of the reservation not allotted, irrespective of the fact that only a certain percentage of allotments had yet been made, and these were scattered throughout the entire reservation. If the Secretary concurred, he would appoint either one or several commissioners and ask that the Commissioner of Indian Affairs submit a "Draught of Instruction" for his approval. After approval, the instructions would be forwarded to the appointees. In most instances the information contained therein was of a very general nature.

The Commission would go to the reservation, negotiate the cession for the surplus lands and draw up an agreement for the approval of the tribe containing the price per acre, and certain other specifics, such as the total amount of money,

the certain sum, the United States was to pay for the area ceded. This fund was to be held in trust for the benefit of the tribe specifically pursuant to Section 5 of the General Allotment Act. The entire agreement would not be effective until ratified by Congress, again, pursuant to Section 5 of the General Allotment Act. In Washington the agreement would be amended by Congress to provide that the surplus land so sold or released by the tribe to the United States was required to be held by the United States for the sole purpose of securing homes to actual settlers if it was adoptable for agricultural purposes, again, pursuant to Section 5 of the General Allotment Act. Finally, the agreement would describe or separate the eastern half or surplus area ceded, by some boundary marker or other survey from that portion of the reservation unaffected by the cession, the western half.

In all agreements of this type this was, in fact, the case. The surplus part of the reservation had been ceded and would soon thereby become essentially a part of the public domain and be opened to homesteading upon amendment and ratification by Congress and proclamation by the President. The other part would remain intact and be referred to as the diminished reservation, or the remaining reserve, or just the reservation. As for those individuals whose allotments were now soon to be situated in the newly created public domain, they were usually given the option to remain so situated or to relinquish their allotment and remove to the diminished reservation and reselect therein. At a later date, this whole process was sometimes repeated again and again on the same reservation. The original reservation would be repeatedly reduced in size over and over, with the ceded area restored to the public domain and opened to actual homesteaders. Many of the members of the Tribe would elect to remain so situated.

Of course, in this hypothesis there would be no question as to the effect of the agreement as ratified on the boundaries of the original reservation. With each opening there would of

necessity be a proper delineation of the area opened from the area remaining or the diminished reservation. Most often this delineation was some type of metes and bounds description because in this period either the territory or the states involved had not been surveyed into distinct county subdivisions, or the surplus area agreed to be ceded was not in conformity therewith. In some cases the "cession" or similar terminology would appear in the text of the act and in others it would not. In some cases the "public domain" terminology would appear in the text of the act and in others it would not. In some cases the "diminished reservation" terminology would be repeatedly referred to in the text of the act and in others it would not.

In any event, boundary questions over agreements of this type from this era would not have been difficult for this Court to dispose of because of the fact that only a portion of the reservations were opened and there existed enough documentation related to the remaining or diminished reservation to resolve the issue. However, when the agreement provided for a cession of all of the unallotted surplus land of the reservation, the question of what effect Congress intended was much more difficult. This was precisely the situation presented in *DeCoteau*.

B. DeCoteau v. District County Court, 420 U.S. 425 (1975). The General Allotment Act permeated the documents which were presented to this Court in *DeCoteau*. Once presented, however, it took only one paragraph to put the entire sequence outlined above in perspective:

In 1887, the General Allotment Act (or Dawes Act) was enacted in an attempt to reconcile the Government's responsibility for the Indians' welfare with the desire of non-Indians to settle upon reservation lands. The Act empowered the President to allot portions of reservation land to tribal members and, with tribal consent, to sell the surplus lands to white settlers, with the proceeds of these sales being dedicated to the Indians' benefit.

Against this background, a series of negotiations took place in 1889 with the objective of opening the Lake Traverse Reservation to settlement. *DeCoteau, supra* at 432-433.

As the *DeCoteau* opinion makes clear, the fact situation therein was by no means atypical. Throughout the western United States many local communities were requesting that surplus reservation lands be made immediately available for farmers, merchants and railroad development. Most of the members of the tribes had already received their allotments. To act with expediency would be to act in the best interest of all concerned. *DeCoteau, supra* at 431-432. These were the "familiar forces" that began to work upon many of the reservations. *DeCoteau, supra* at 431. Surplus land statutes pursuant to Section 5 of the General Allotment Act were the vehicles through which the overall process was channelled.

In *DeCoteau*, the initial request from the local community was for "the opening of the reservation." Letter, *DeCoteau, supra* at 431, n. 8. The Secretary of the Interior requested that a set of instructions be drafted "for the guidance of a Commission . . . to negotiate with the Sisseton and Wahpeton Indians for the sale of their surplus lands." The purpose, as per the instructions, was for "negotiating with the Sisseton and Wahpeton Indians for the relinquishment of such portions of the Lake Traverse Reservation, not allotted as said Indians may consent to release." Instructions, *DeCoteau, supra* at 434, n. 13. The negotiations were expressly stated to be pursuant to Section 5 of the General Allotment Act. *DeCoteau, supra* at 434.

Although it was noted that it might be "inadvisable" to include all of the unallotted surplus land in the transaction, the operative language of the final cession agreement provided for precisely that:

The Sisseton and Wahpeton bands of Dakota or Sioux Indians hereby *cede, sell, relinquish, and convey to the United States all their claim, right,*

title, and interest in and to all the unallotted lands within the limits of the reservation Act of March 3, 1891, 26 Stat. 1035 (emphasis added).

Apart from the amount of land involved, the operative cession language of this surplus land statute was typical.¹

In terms of ratification, Section 5 of the General Allotment Act further stated that the cession or sale should be "in conformity with the treaty or statute under which such reservation is held." Act of February 8, 1887, 24 Stat. 390. The Commissioner of Indian Affairs had earlier noted that "no provisions regarding the cession or relinquishment of the reservation or any portion thereof" could be found in the 1867 treaty creating the Lake Traverse Reservation as a permanent reservation. Instructions at 2, *DeCoteau, supra* at 434, n. 13 (emphasis added). It was therefore concluded that the consent of a majority of the adult male members of the Sisseton-Wahpeton Tribe should suffice. Instructions at 2, *DeCoteau, supra* at 434, n. 13. After two weeks of prolonged negotiations, the formal signed consent of this number of the adult male members of the tribe was obtained.

Before the Sisseton-Wahpeton cession agreement was presented to Congress for ratification, the Government negotiators first presented a rather detailed report to the Commissioner of Indian Affairs. In the report, specific explanations for certain provisions and other recommendations were made. A short time later the entire package, i.e. the agreement, the council transcripts, the report and the official recommendations, was forwarded to Congress. The agreement was then reported with certain amendments and others were later added via the congressional debates.

As passed by Congress, the 1891 Sisseton-Wahpeton Act recited verbatim and ratified the 1889 Agreement. Act of

1. See, *DeCoteau, supra* at 439, n. 22, for the minor variation in the operative cession language of the other agreements ratified by the Act of March 3, 1891.

March 3, 1891, 26 Stat. 1035. Parts of Section 26, all of Sections 27, 28, 29 and Section 30, as well as the two omnibus provisions, Section 35 and Section 38, were amendments to the original 1889 Agreement. *DeCoteau*, *supra* at 441, 446, n. 33. The first amendments dealt with the preamble (Section 26), the certain sum appropriated (Section 27), the lands occupied by religious or other organizations (Section 28), the authority pursuant to the General Allotment Act for additional allotments prior to the opening (Section 29), and the homestead provision and school lands provision (Section 30). The omnibus provisions were directed to the lands occupied by the religious or other organizations and the school lands grant. Section 35, Section 38, 26 Stat. 1035.

After a sufficient period of time had elapsed to enable the completion of the necessary allotment and other administrative details, the Proclamation of President Harrison in April, 1892, declared that the lands "be opened to settlement." Proclamation of the President, April 11, 1892, 27 Stat. 1017. With this Act and Proclamation the exterior boundaries of the Lake Traverse Reservation were necessarily disestablished and the allotments therein placed in what was in essence the midst of the public domain. *DeCoteau v. District County Court*, 420 U.S. 425 (1975).

Significantly, the precise effect of the 1891 Act on the Lake Traverse Reservation was not readily apparent in the *DeCoteau* documents. As the Court noted, the members of the Sisseton-Wahpeton Tribe had elected to cede all of the unallotted surplus lands. In this situation, there was no "carving out of a diminished reservation" for anyone to be concerned with and hence a probative source of documentation in terms of the issue presented was a factual impossibility. There were no direct references to what would remain after the ratification of the agreement by either the government or the members of the Sisseton-Wahpeton Sioux Tribe. Thus, in order to accurately ascertain the intent of Congress, this Court had to establish the proper historical perspective from

which to view the events in question. The perspective was the overall purpose of the General Allotment Act and the surplus land statutes enacted pursuant thereto. It was "against this background" that the Act in question took place. *DeCoteau*, *supra* at 432. These were the "familiar forces" at work in *DeCoteau*.

Once this perspective was established, the issue was convincingly resolved. In both respects the task of the courts below was far less difficult. In the first place, none of the Rosebud Acts in question were concerned with all of the surplus unallotted lands of the Rosebud Reservation. Here was a prime example of where the government and the tribe had over a period of six years "carved out a diminished reservation." *DeCoteau*, *supra* at 447. Secondly, and more importantly, *DeCoteau* had already established the proper historical perspective from which the Eighth Circuit Court of Appeals could view the issue if the facts remained essentially the same. As the following sequence reveals, there is no question as to whether the facts remained the same. In less than ten years after the 1891 *DeCoteau* Act, the same "familiar forces" were felt on the Rosebud Reservation and Congress reacted in the same manner as outlined above.

C. Rosebud Legislation.

1. The Act of April 23, 1904, Gregory and Lyman Counties, South Dakota. Because the original Rosebud Reservation was not delineated as such until the Act of March 2, 1889, 25 Stat. 888, certain provisions of the General Allotment Act of 1887 were actually incorporated verbatim therein. In terms of the question presented, only Section 12 of the 1889 Act need be set forth at length.

Sec. 12. That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interest of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase

and release by said tribe, in conformity with the treaty or statute under which said reservation is held of *such portions of its reservation* not allotted as such tribe shall, from time to time, consent to *sell*, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until *ratified* by Congress Act of March 2, 1889, 25 Stat. 888 (emphasis added).

As is readily apparent, Section 12 of the 1889 Act is the same as the Section 5 of the General Allotment Act under which the surplus land statute construed in *DeCoteau* was initiated, negotiated, amended and finally ratified. See Section 5 at 7, *supra*. This fact accounts for the reason that the format of the initial Rosebud negotiations parallels that found to exist in *DeCoteau*. The "familiar forces" were one and the same.

In Rosebud, as in *DeCoteau*, "a nearby and growing population of farmers, merchants and railroad men began urging authorities in Washington to open the reservation to settlement." *DeCoteau, supra* at 431. In 1898 Gregory County, South Dakota, was organized with a large portion of the area lying within the Rosebud Reservation. Soon thereafter, the resident population began urging Washington to act so that this portion of the "reservation could be opened and opportunity given for settlement and development of that region of the state." R. A. App. II, Doc. 1 at 1. A proposed extension of the railroad added to the feasibility of the project. General statutory authorization for the Secretary of the Interior "to *negotiate* through any United States Indian Inspector, agreements with any Indians for the *cession* to the United States of portions of their respective reservations or surplus unallotted land" followed shortly thereafter. R. A. App. II, Doc. 2 at 1 (emphasis added).

On March 19, 1901, a United States Indian Inspector, James McLaughlin, was instructed by the Commissioner of Indian Affairs to commence "*negotiations* with the Indians of

the Rosebud reservation, in South Dakota, for the *cession* of the unallotted eastern portion of their reserve." R. A. App. II, Doc. 2 at 1 (emphasis added). The Commissioner further noted that:

To preserve the regularity of the reservation boundary in the event that a *cession* is made, the townships east of the western boundary line of Gregory County in range 100 to wit, fractional township 71 and townships 72 and 73 lying in Lyman County, should also be ceded. R. A. App. II, Doc. 2 at 2 (emphasis added).

As in *DeCoteau*, the Inspector proceeded to the reservation, negotiated the cession for a certain sum and obtained the formal signed consent of three-fourths of the adult male members of the Rosebud Sioux Tribe. The operative language of the certain sum agreement is, in substance, identical to the Sisseton-Wahpeton Agreement:

The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby *cede, surrender, grant, and convey to the United States all their claim, right, title and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted*, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: . . . R. A. App. II, Doc. 3 at 28 (emphasis added).

As in *DeCoteau*, the Inspector prepared a report that accurately portrayed the negotiations to date:

Under instructions contained in Department letters of the respective dates of March 21 and May 21 last, and Indian Office inclosures, I have the honor to transmit herewith an agreement, dated September 14, 1901, entered into by me, as United States Indian inspector, on the part of the United States, with the Indians of the Rosebud Agency, S. Dak.,

by which the said Indians *cede* to the United States their surplus or unallotted lands lying within the boundaries of Gregory County, S. Dak., approximating 416,000 acres, for a consideration of \$1,040,000. R. A. App. II, Doc. 3 at 5 (emphasis added).

Before this Court even Petitioner now openly concedes that had Congress ratified the substance of this 1901 Agreement, there would have been no question to present. Pet. at 14. In light of *DeCoteau*, the substance of the concession is a foregone conclusion. However, prior to *DeCoteau* and the order of the court below that directed that supplementary briefs be filed on the applicability and effect of the same, the position of Petitioner as a matter of record was by no means so candid. At best, the argument of Petitioner could be described as in the alternative.

At one stage of the proceedings below, both Petitioner and the Government seemed to be relying upon the General Allotment Act of 1887 as the point in time that marked a departure in terms of a continued congressional policy that disestablished portions of reservations. In essence, the arguments were similar to those presented by the Government in *DeCoteau*. According to the Petitioner and the Government, surplus land statutes pursuant to the General Allotment Act were never intended to have this effect. But this was prior to *DeCoteau*. The Act in *DeCoteau* was a surplus land statute pursuant to the General Allotment Act. It did disestablish the reservation.

After the holding in *DeCoteau* and because of the absence of any specific support in the 1901 Rosebud documents evidencing a departure in policy, the arguments had to be cast aside. New arguments were immediately formulated and tailored to certain events subsequent to the 1901 Rosebud agreement — events that Respondents submit were not even related to the question presented, but were, nevertheless, the

last possible refuge for a position that had been established to be clearly untenable.²

The crux of this new position is founded upon the fact that subsequent to the time the 1901 Agreement was presented for ratification, Congress balked at the "certain-sum-in-trust" surplus land statutes that required direct appropriations of large amounts of tax dollars to pay for the areas in question. As a result, another method was decided upon whereby payment could be made directly by the homesteaders filing upon the surplus land. This amount would then be credited in trust for the benefit of the tribe in the same manner that the certain-sum-in-trust, which the government had previously appropriated, was so credited.

The method, termed the "uncertain-sum-in-trust" method by the courts below, according to Petitioner and the Government, *now* represents the point in time that marked a "gross departure" in terms of a continued congressional policy of disestablishing portions of reservations. Statutes which incorporated this provision, according to Petitioner and the Government, were "designed for a different purpose" in terms of the question presented below. Brief for Appellant below at 43, 49. In an attempt to bolster this argument, Petitioner has even redefined surplus land statutes to include only those statutes that contain the uncertain-sum-in-trust provision. Pet. at 5, 17, 19. Thus, according to Petitioner, the 1891 Act in *DeCoteau* was *not* a surplus land statute. Within this new definition, Petitioner can without hesitation now state:

This is the first case in which any Federal Appellate Court has held that a 'surplus' land statute disestablished a reservation. Whenever the question has been presented, this Court has held that sur-

2. Certain elements of the new arguments were presented earlier in the proceedings below. Primarily these elements were used as alternatives to the General Allotment Act argument. At times, however, they were joined with the General Allotment Act argument. In this respect the arguments below were unclear to Respondents.

plus land statutes do not operate to terminate the reservation status. Pet. at 19.

After *DeCoteau* the Government did change its argument in the court below and adopt the "gross departure" position of Petitioner. But the new definition of a surplus land statute was another matter entirely. Even the Government refused to adopt this argument.

Both the new definition and the new purpose are contrary to *DeCoteau* and two decades of General Allotment Act legislation. The courts below rejected the innovative arguments of Petitioner and the Government for the reason that the same sources that made clear the purpose, understanding and intent of the surplus land statute construed in *DeCoteau*, made it equally clear that the purpose, understanding and intent of the surplus land statutes presented in Rosebud remained the same: the language, legislative history and surrounding circumstances of the Acts in question. Even the manner in which the proposition was again presented to the Rosebud Sioux Tribe unequivocally confirms that this was in fact the case.

On June 30, 1903, Inspector McLaughlin was instructed to return to the Rosebud Reservation. Significantly, the instructions still explicitly stated that his trip was "for the purpose of negotiating a new agreement with the Indians thereof for the cession of the unallotted portion of their reserve embraced in Gregory County." R. A. App. II, Doc. 10 at 1 (emphasis added). In open council Inspector McLaughlin presented the proposal to the tribe in the same manner: "I am here to enter into an agreement which is similar to that of two years ago, except as to the manner of payment." R. A. App. II, Doc. 11 at 21 (emphasis added).

After the members of the tribe had debated and considered the new proposal, another cession agreement incorporating the "uncertain-sum-in-trust" provision was drafted. Significantly, the operative language of the new agreement was identical to that of the agreement concluded in 1901:

That said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereafter named, do hereby *cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows.* R. A. App. II, Doc. 12 at 1 (emphasis added).

By the date of the last council, a majority of the adult male members of the Rosebud Sioux Tribe formally consented and signed the new agreement.

In his Report to the Secretary of the Interior, Inspector McLaughlin again accurately portrayed what is reflected throughout the council transcripts. In terms of the question presented the Report simply stated:

I have the honor to report the result of my negotiations with the Indians of the Rosebud Reservation, South Dakota, for the *cession* of their unallotted land in Gregory County, South Dakota. R. A. App. II, Doc. 13 at 1 (emphasis added).

With the recommendation of the Secretary of the Interior and the Commissioner of Indian Affairs, Congress added the substance of this *cession* agreement by amendment to the original 1901 *cession* agreement and, as in *DeCoteau*, it was then recited and ratified in the 1904 Act. Insofar as the Rosebud Reservation is concerned, if the 1904 Act was "designed for a different purpose," that purpose never surfaces in the Rosebud documents. On May 13, 1904, President Roosevelt proclaimed the surplus unallotted land in the counties "as aforesaid ceded . . . opened to entry and settlement." Proclamation of the President, May 13, 1904, 33 Stat. 254.

In the court below Petitioner stressed the fact that three-fourths of the adult male members of the Rosebud Sioux

Tribe had not formally consented and signed the substance of the 1904 Act. The Treaty of 1868 stated that this was a prerequisite to the validity of any future *cession* and only a *majority of the members* of the tribe had formally consented and signed the 1903 agreement. According to Petitioner initially, the cession language and indeed, the entire format of the 1904 Act was a "dirty trick" devised by the Commissioner of Indian Affairs, the Secretary of the Interior, and Congress — a "pretense," a "camouflage," a "front to give the statute the face of an *agreed* transaction." Brief for Appellant below at 18, 31, 43. This was the reason why the Commissioner of Indian Affairs, the Secretary of the Interior and Congress retained all of the methodology of the *cession* era, which was utterly inconsistent with the position of Petitioner that the "uncertain-sum-in-trust" statutes were "designed for a different purpose." Apart from the fact that the position of Petitioner was self-defeating in that the 1868 Treaty provision was directed to the very *cession* policy that disestablished portions of reservations, which Petitioner maintained had since been abandoned by the adoption of the uncertain-sum-in-trust provision, the dirty trick argument was expressly refuted in the Rosebud documents.

In 1903 this Court decided *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). On fundamental constitutional grounds, *Lone Wolf* specifically recognized that Congress could, in good conscience and for the benefit of the entire country, as well as the individual members of the tribe, enact legislation of this nature *without* formally complying with an identical provision in another treaty that was said to have also required the formal consent of three-fourths of the adult members of other tribes on another reservation. The *Lone Wolf* decision is repeatedly cited, analyzed, explained and relied upon by the Commissioner of Indian Affairs, the Secretary of the Interior and Congress in the Rosebud documents. In each negotiation conducted subsequent to the decision, the members of the Rosebud Sioux Tribe received the same accurate and detailed explanation of the ramifications of *Lone Wolf*. It was fully

understood by all. Petitioner never cited or mentioned *Lone Wolf* in any of the four briefs presented to the court below, although Petitioner continually stressed the fact that only a *majority* of the adult male members of the Rosebud Sioux Tribe had consented to the Rosebud legislation.

Congress did not need the "facade" of Petitioner. In light of *Lone Wolf* it did not need even the informal consent of the members of the Rosebud Sioux Tribe, although it never acted accordingly. The premise of the dirty trick argument did not exist. Thus, the continued use of the *cession* methodology subsequent to the adoption of the uncertain-sum-in-trust provision, as in the 1903 materials *supra*, assumes an additional degree of significance. All references to the 1868 prerequisite for *cessions* are similarly inexplicable if Congress and the Tribe, as Petitioner states, did not understand or intend the Acts in question to disestablish any portion of the reservation affected. Before this Court Petitioner has abandoned part of the dirty trick argument in favor of the position that everyone involved was simply incompetent. Pet. at 32. All references of this nature in the House and Senate Reports and the *Congressional Record* are now the result of an "erroneous understanding that the land was being ceded" and the "mistaken belief that the Indians had agreed to the sale or disposition of the land." Pet. at 32. This argument, though equally untenable in light of *Lone Wolf*, does not alter either the intent of Congress or the understanding of the Rosebud Sioux Tribe. With these facts in mind, the manner in which the 1907 Act was presented to the members of the Rosebud Sioux Tribe can now be addressed.³

2. The Act of March 2, 1907, Tripp County, South Dakota. By June of 1906 the allotment process on yet another portion of the Rosebud Reservation had progressed to the point where

3. See, Pet. App. A at 34 n. 78, wherein the court noted: Since the tribe urges that the 1904 Act did not alter the boundaries, it does not contend any change of purpose as evidenced by the 1907 Act.

the "familiar forces" referred to above were set in motion once again. This time, the surplus unallotted land in Tripp County, lying immediately west of Gregory County, was the focal point of attention. Again, it was Senator Gamble of South Dakota who made the initial request of the Secretary of the Interior that an Inspector be detailed to enter into negotiations with the Rosebud Indians for the cession of the surplus unallotted land in Tripp County, South Dakota. R. A. App. III, Doc. 18 at 1.

By December, 1906, the administrative details were complete. The Commissioner of Indian Affairs prepared the draft of the instructions at the request of the Secretary of the Interior. R. A. App. III, Doc. 18 at 1. The substance of the proposition was again referred to as "*negotiations*" for the "*cession of the surplus unallotted lands in Tripp County.*" R. A. App. III, Doc. 18 at 1 (emphasis added). On the reservation, Inspector McLaughlin presented the proposition in open council to the members of the tribe in the same manner:

I am here under orders of the Secretary of the Interior to submit to you a proposition for the *cession* of your surplus unallotted land in Tripp County. R. A. App. III, Doc. 19 at 1 (emphasis added).

At the conclusion of many days of council, another *cession* agreement incorporating the "uncertain-sum-in-trust" provision was drafted. Significantly, the operative cession language of the 1906 Agreement was identical to that of the original "certain-sum-in-trust" agreement concluded in 1901:

The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration herein named and in the manner hereinafter provided, do hereby *cede, grant, and relinquish to the United States, all claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation lying south of the Big White River and east of range 25 west of the sixth principle meridian in South*

Dakota, except such portions thereof as have been, or may hereafter be, allotted to Indians. R. A. App. III, Doc. 21 at 5 (emphasis added).

Here, as was the case in 1903, the majority of the adult male members of the Rosebud Sioux Tribe again formally consented and signed the new agreement.

It is again important to note that the Department of the Interior was fully aware of the decision of *Lone Wolf*. Indeed, the instructions to Inspector McLaughlin discussed the ramifications of the decision in detail. R. A. App. III, Doc. 18 at 9. In terms of standard operating procedure, the Commissioner of Indian Affairs placed *Lone Wolf* in the following perspective:

I have heretofore said in substance that, in my judgment, it is a mistake for Congress to direct the restoration of the surplus lands of an Indian reservation to the public domain *without* first referring the question to the Indians . . . Letter from F. E. Leupp, Commissioner of Indian Affairs to the Secretary of the Interior, December 15, 1906 (emphasis added).

There is little doubt that the Department acted accordingly.

In the Senate, as the court below pointed out, the 1906 Agreement was initially recited and presented for ratification in the same form as the 1904 Act at the specific recommendation of the Commissioner of Indian Affairs. Pet. App. A at 36. Because the House had already acted on another bill in a different form, however, the Senate version was eventually tabled. The operative language of the new House version was equally suited to effect the same result. It provided:

To sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range 25 west of the sixth principle meridian, except such portions thereof as have been, or hereafter be, allotted to Indians. Pet. App. C-2 at 121 (emphasis added).

Insofar as the reason for the departure in terms of the format of the legislation, Congressman Fitzgerald simply noted that it had not been the practice to use the cession format for several years. Pet. App. A at 37, n. 72. The bill became law on March 2, 1907, and as such it was still, as in *DeCoteau*, a surplus land statute pursuant to what was in essence Section 5 of the General Allotment Act of 1887. On August 24, 1908, President Roosevelt Proclaimed the surplus unallotted land in Tripp County "opened to settlement." Proclamation of the President, August 24, 1908, 35 Stat. 2203.

The specific evidence of the effect of the 1907 Act on the Rosebud Reservation is sufficiently set forth in the opinions below. It need not be repeated here. It is sufficient to note that the "uncertain-sum-in-trust" provision deemed to be significant by Petitioner and the Government did not merit the attention of a single individual in terms of the question presented. In all material respects, the scope and purpose of the 1907 Act remained the same.

3. The Act of May 30, 1910, Mellette County, South Dakota. By the time the next portion of the Rosebud Reservation, Mellette County, was made ready for similar legislation, Congress had adopted the position that it was no longer necessary to *formally* obtain the signed consent of a majority of the members of any tribe prior to congressional action. As a result, although Inspector McLaughlin was again detailed to the Rosebud Reservation to conduct both informal and formal councils for negotiations, these councils were not for the purpose of obtaining a signed cession agreement as in the past. In all other respects, the methodology of the negotiations remained essentially the same.

The initial request for the Mellette County legislation again originated with Senator Gamble of South Dakota, who drafted a bill with operative language along the lines of the "sell and dispose" terminology of the 1907 Tripp County Act. In Senator Gamble's words, Inspector McLaughlin was "to use the bill as a basis for an agreement looking to the cession

of the lands in question." Letter from Congressman Burke to R. A. Ballinger, Secretary of the Interior, June 9, 1909 (emphasis added). On the reservation, Inspector McLaughlin presented the proposition in a similar manner:

Inspector McLaughlin. My friends, this is the fifth time that I have *negotiated* with you for lands, and I have been here so often with respect to the *cession* of lands, that my friend High Pipe, has given me the name of 'the man who bothers his friends for more land.' R. A. App. III, Doc. 28 at 3 (emphasis added).

The other members of the tribe viewed the proceedings in the same light as High Pipe. This was to be another *cession* of land. Nor did they perceive any difference in this respect between the proposed "certain-sum-in-trust" cession of 1901 and the "uncertain-sum-in-trust" cession that was now before them. The same 1868 cession prerequisite was again discussed in three separate phases of negotiations. Contrary to the overall position of Petitioner and the Government, none of the changes that had evolved since 1901 were yet elevated to the level of a distinction, at least insofar as the Rosebud Reservation was concerned.

In the report on the negotiations, Inspector McLaughlin noted that again "a large *majority* of the Indians of the Rosebud reservation and more particularly nearly all of the younger men" were in favor of the proposition. R. A. App. III, Doc. 29 at 4 (emphasis added). In the final draft of the bill that would eventually become the 1910 Act, the area in question was succinctly described in terms of the "tract ceded." Pet. App. C-3 at 124. The portion of the reservation that was to remain intact was described as the "diminished reservation." Pet. App. C-3 at 124. This and similar cession and sale terminology also appears throughout the congressional debates. On May 30, 1910, the legislation was signed by President Taft and on June 29, 1911, it was Proclaimed "opened to settlement." Proclamation of the President, June 29, 1911, 37 Stat. 1691.

4. The Todd County Documents. With the passage of the 1910 Rosebud Act and the opening of Mellette County to settlement, the decade of Rosebud legislation presented for construction is officially closed. One of the counties within the original confines of the Rosebud Reservation remained intact. This was Todd County, an area containing approximately one million acres and located in south-central South Dakota. Both the district court and the court of appeals found that as a result of the three Acts in question, the boundaries of the Rosebud Reservation encompass Todd County and only Todd County. The foregoing materials have not been set forth to substantiate these decisions in terms of specific evidence of congressional intent. Most of the material evidencing that intent is cited in the text of the opinions. In *Rosebud*, as in *DeCoteau*, however, the perspective from which the material is viewed is of the utmost importance. It is the position of Respondents that the opinion of the Court in *DeCoteau* contains the proper perspective from which the Rosebud legislation should be viewed. The foregoing was intended only to substantiate this position.

Prior to each of the three Rosebud Acts, a *majority* of the adult male members of the Rosebud Sioux Tribe consented to what was aptly described as a *cession*. *Whether all three negotiations formally resulted in cessions is not in issue*. The three Rosebud Acts are surplus land statutes pursuant to what is in essence Section 5 of the General Allotment Act. Here, as in *DeCoteau*, all three Acts are appropriate vehicles to carry out the intent of Congress and understanding of the Rosebud Sioux Tribe.

It should be noted that Petitioner has elected to also include within the "Statement of Facts" an attempt in 1911 toward additional legislation affecting Todd County. If the proposed legislation had not died after passing the Senate, Petitioner posits that "according to the decision below, there would be no Rosebud Reservation." Pet. at 14-15. In other words, if the court below was correct in its construction of the

three Rosebud Acts, the fourth act would have effectively dis-established the reservation. The end result would then have been on all fours with *DeCoteau*, if the decision of the court below was correct. Although only the Senate passed the proposed legislation, it is significant that the Todd County documents unequivocally support this position.

As early as 1909, the Acting Commissioner of Indian Affairs received inquiries relative to the disposition of the surplus unallotted land in Todd County. In one response, the Commissioner stated:

No legislation has been enacted providing for the opening of Meyers [Todd] County, South Dakota, and *until* provision has been made for such opening that county will remain a part of the Rosebud Reservation. Letter from Acting Commissioner of Indian Affairs to W. W. Rankin, March 24, 1909 (emphasis added).

In 1911, the Todd County legislation was introduced and Inspector McLaughlin was again detailed to conduct the negotiations. In the negotiations there was no question that the members of the tribe were decidedly *opposed* to the proposition. In his report the refusal of the tribe to consent to the proposition was noted by Inspector McLaughlin with the recommendation that "the public interest would not be seriously affected" if the legislation was "deferred for a year or two." R. A. App. III, Doc. 38 at 4. Because of this recommendation, which was based on the noted opposition of the members of the Rosebud Sioux Tribe, the Todd County legislation was eventually tabled in the House of Representatives.

The following are representative excerpts from the Todd County documents that Respondents presented in detail to the court below. The "familiar forces," the cumulative effect of the three Rosebud Acts, the manner in which the members of the Rosebud Sioux Tribe understood the same and the

significance of tribal consent once withheld are all persuasively documented herein by the same individuals that participated in the decade of Rosebud legislation.

1. Todd County Documents: Senator Gamble.

The area proposed to be opened comprises *all the remaining lands within the Rosebud Reservation*. Conditions are such on this reservation I believe it would be greatly to the advantage of the Indians should the lands be open to settlement. Railway extensions are in prospect in this part of the state. The opening of the lands would encourage and I believe make certain such extension. The development of this part of the state has been greatly retarded in consequence so much of the lands being held *within* Indian reservations, and I regard it a matter of the utmost importance to the development and growth of the state that the lands be thrown open to settlement at the earliest practicable date consistent with the best interest of the Indians. I know of no substantial reasons why such conditions do not now exist. Letter from Senator Gamble to the Secretary of the Interior, April 12, 1911 (emphasis added).

2. Todd County Documents: Senate Report.

In the opinion of your committee the surplus and unallotted lands are unnecessary for the use of the Indians and the opening of *the* reservation will result in a large increase in the settlement and development of that part of the State and will, to a very large extent, enhance the value of the holdings of the Indians. Your committee regards it as of the highest importance, not only to the Indians themselves but to the people of the State and to the General Government, that all the surplus and unallotted lands should be open to settlement at the earliest practical date. R. A. App. III, Doc. 39 at 2 (emphasis added).

3. Todd County Documents: Council Transcripts.

Clarence White Thunder: The next time the Great Father sends his message to Congress tell him not to mention Todd County. We hold onto Todd County for fifty years.

Rueben Quick Bear: Every time you come here we give you

the land. Now we have a *small* reservation and we don't want to sell or dispose of *it* in any form.

Todd Smith: Whatever I say here about this proposition is alright and Senator Gamble will know it. Tell him that he wants to buy Todd County but Todd (Smith) won't sell it.

Louis Bordeaux: Before when you came for land I was always glad to help you because you are a friend of mine. We have given you three good counties of land. *And this last county we have, there is very little good land left in it. We have given you three counties.*

Inspector McLaughlin. I fully appreciate your feelings on this matter, knowing that *your reservation* which was a very large one a few years ago is *now reduced to the limits of Todd County*, and I can understand very well how you feel; that you are very desirous and anxious to retain this county intact. R. A. App. III, Doc. 37 at 3, 5, 8, 9, 11, 14-15 (emphasis added).

4. Todd County Documents: Report of Inspector McLaughlin.

The diminished reservation of the Rosebud Indians is now embraced in Todd County, South Dakota . . . In the past eight years the Rosebud Indians have consented to the opening of fully three-fourths of their original reservation, that is, Gregory County in 1904, Tripp County in 1909, and Mellette County, recently appraised and registered for and opened to entry April first next. With the diminished reservation of the Rosebud Indians being now only one-fourth of this area eight years ago . . . the Pine Ridge Indians having at present three-fourths of their original reservation intact, while the Rosebud Indians, whose reservation adjoins the Pine Ridge Indian Reservation on the east, have had their reservation diminished in the past eight years to one-fourth of its original area. They [the Rosebud Indians] having so commendably consented to each of the three cessions of their reservation in the past eight years.

Furthermore, the provision in the first Section of said bill, lines 10 to 14, page 2, is *superfluous*, which reads: 'That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotment in lieu thereof on the diminished reservation.'

The said Senate Bill provides for the opening of all the surplus lands of the Rosebud Reservation and *should the bill become a law there would be no diminished Rosebud reservation*. R. A. App. III, Doc. 38 at 4, 5, 6 (emphasis added).

5. Todd County Documents: The Secretary of the Interior.

The Indians are decidedly opposed to *opening the diminished reservation* at this time and that there will be but little desirable land to place on the market should the bill become a law, I have the honor to recommend that no further action be had on the bill at this session of Congress. *By successive openings within the past few years their reservation has been reduced to less than one-fourth of its original area. This leaves within the diminished reservation at this time the lands in Todd County only.* Letter from the Secretary of the Interior to Senator Gamble (emphasis added).

For the information of your committee, however, it may be pointed out that by successive openings within the past few years *this reservation has been successively reduced to less than one-fourth of its original area.* Gregory County was opened in 1904 under the provisions of the act of April 23, 1904, (33 Stat. L. 254), Tripp County, in 1908, under the act of March 2, 1907, (34 Stat. L. 1230); and Mellette County will be opened during the present year under the act of May 30, 1910 (36 Stat. L. 448), the President's proclamation therefor having been issued on June 29, 1911.

It may be said that upward of 7,000 Indians within this reservation have previously been allotted approximately 1,679,000 acres of land, of which 636,300 acres fall *within Todd County — the diminished reservation.* R. A. App. III, Doc. 39 at 4 (emphasis added).

6. Todd County Documents: Tribal Petitions in Opposition.

We protest against the opening of our last remaining portion of our once large Reservation . . . Parting with our last remnant of a reservation. We have already been deprived of the counties of Gregory, Tripp and Mellette within the last few years . . .

We have already, since the treaty of 1889, contributed to the Government, to be opened to settlers, and sold, four tracts of land . . .

The very best farming land that *was* in the Rosebud Reservation we gave up when the counties of Tripp and Gregory were

opened to settlement. Petitions, Brief of Appellees below at 57 (emphasis added).

As this Court stated in *Mattz*, although subsequent legislation is usually not entitled to much weight when construing earlier statutes, it is not always without significance. *Mattz*, *supra* at 481, n. 25.⁴

II

THE PETITION DOES NOT PRESENT A QUESTION WORTHY OF THE DISCRETIONARY JURISDICTION OF THIS COURT.

A. The Decision Below Does Not Present a Question of Broad General Importance in Indian Law.

Contrary to the position of Petitioner, the decision below does not present a question of broad general importance in Indian law. Insofar as the Rosebud Reservation is concerned, the decision simply maintains the status quo. The portions of the original reservation affected by the three Rosebud Acts have not been considered to be within the boundaries of the Rosebud Reservation for over sixty-five years. The boundaries of the Rosebud Reservation encompass Todd County. While Petitioner might "believe" the other counties involved have been and are now administered by the United States as an "Indian reservation," this belief is wholly without foundation. Pet. at 17. As a matter of common knowledge, no agency of the federal government has ever treated these areas as an Indian reservation since the passage of the Acts in question. A cursory examination of the records in the Office of the

4. Also see Pet. App. A at 34, n. 54, 44 n. 88, for the text of some of the statutes that describe the other counties as "heretofore a part of" and "formerly within" the Rosebud Reservation. In contrast to the *informal* correspondence in *DeCoteau* that contained similar references which the Court could not weigh heavily, the Rosebud statutes are clearly significant. Some of the sponsors of the Acts in issue also sponsored the "former" legislation. Moreover, the cartographic record of the original Rosebud Reservation also reflects this construction. It is identical to that of the Lake Traverse Reservation. *DeCoteau* at 442.

United States Attorney for the District of South Dakota would confirm this fact. Moreover, until recently the Rosebud Sioux Tribe always operated under this assumption. In the early 1960's, the Tribal Council even refused to allow a member of the tribe that resided in one of the counties in question to run for tribal chairman. The stated reason of the Tribal Council was simply that the member did not "reside on the reservation." In other words, he did not reside in Todd County.⁵

In stark contrast to Todd County, the Rosebud Reservation, the counties of Gregory, Lyman, Mellette and Tripp are not unlike the other counties in the State of South Dakota that are *not* within the boundaries of an Indian reservation. In terms of the land still held in trust by the United States Government for the benefit of the members of the Rosebud Sioux Tribe, the entire acreage does not exceed 15 percent of the total land base. Approximately 10 percent of the resident population are enrolled members of the Rosebud Sioux Tribe. These members reside throughout the counties with the other non-member residents of the State of South Dakota on small

5. It is doubtful that the Tribal Council would elect to enforce a similar requirement today. In recent months the views of the Tribal Council have changed considerably. The statement of Petitioner at 25 that the jurisdiction of the Rosebud Sioux Tribe is limited to Indians on the Reservation has evidently not been formally passed on to this tribal government or this tribal court. Within the past year, the Rosebud Sioux Tribe has enacted two separate ordinances to the contrary. The first ordinance asserts *complete* civil and criminal jurisdiction over *all* persons within the original boundaries of the Reservation. The second ordinance asserts the right to *remove* to the original boundaries of the Reservation *any* person deemed "socially undesirable." Although the tribal court has not issued any orders to date under the second ordinance, it does routinely issue and attempt to act on arrest warrants for non-members, felonies and misdemeanors alike, pursuant to the first ordinance. This is the same tribal court that issued an order purporting to restrain the entire Federal Bureau of Investigation from executing federal felony arrest warrants anywhere within the same boundaries. As recently as last week, the tribal court issued an *ex parte* order restraining all County High School officials and members of the Board of Education from implementing a disciplinary decision that removed a student from a basketball team. All but three of the school officials are not members of the Rosebud Sioux Tribe. The jurisdiction of the Rosebud Sioux Tribe might well be "limited" but the conception of this limitation in the eyes of the tribal government and tribal Court is to date difficult to ascertain.

farms and ranches, and in rural communities such as Winner, South Dakota, with a total population of approximately 4,000. Respondents offer these facts as such and nothing more. This Court has a right to know that the Petition does not present an issue that involves only members of the Rosebud Sioux Tribe residing on land traditionally designated as within the boundaries of a reservation.⁶

6.

County	Total Acreage	Trust Land	Percent of Total	% Enrolled in Tribe	Total Population
Gregory*	639,360	24,463	3.826	4.98	6,701
Tripp	1,036,800	71,291	6.876	6.00	8,169
Mellette	835,840	284,831	34.077	34.00	2,413
Lyman*	124,165	2,090	1.683	NA	NA
TOTAL	2,636,165	382,675	14.5	9.5	17,283

Acreage figures are based on the portion of the county within the original 1889 boundaries of the Rosebud Reservation as of June 30, 1975. Bureau of Indian Affairs, Department of Realty, Rosebud, South Dakota. The population figures were only available for the entire county. Census of the Population, 1970, Characteristics of the Population, Part 43, South Dakota.

If the population figures are to be used "even as coloring," Petitioner objects to the use of the 1970 Federal Census because it is "grossly inaccurate." Pet. at 25, n. 22. Petitioner would rather have the Court rely on the figures in the table Petitioner has prepared at Appendix B at 129. The cited source listed under "Reservation Population" is not identified beyond "Federal and State Indian Reservations." App. B at 129. Respondents obtained a copy of the most recent edition of a work entitled "Federal and State Indian Reservations and Indian Trust Areas" printed in 1974 by the Department of Commerce. Stock No. 0311-00076. For the original Rosebud Reservation it lists "Mellette, Todd and Tripp Counties." Federal and State Indian Reservations at 500. Gregory County is omitted entirely. Moreover, the population statistics are said to encompass "Indians residing on or adjacent to reservation" and not just "Reservation Population." State and Federal Indian Reservations at 501. In this light, the county by county breakdown of the 1970 Federal Census would appear to Respondents to serve as a more appropriate source of accurate information. Petitioner has arbitrarily selected the year 1925 as a source from which to list the total acreage of trust land remaining in the counties in question. The source of the trust land statistics Respondents have submitted are the most recent available from the Bureau of Indian Affairs, Rosebud, South Dakota.

In the petition for rehearing en banc below, Petitioner and the Government severely reprimanded the court of appeals for the citations to trust land and population figures appearing in the opinion of the court. According to Petitioner and the Government, these facts had "no legal bearing" on the issue presented. Before this Court, Petitioner renews some of the criticism. All are "irrelevant" and the number of non-Indians specifically has "no relevancy." Pet. at 24, 25. In the first place, the court below never stated that the statistics did have a "legal bearing" on the issue of congressional intent. Secondly, Petitioner and the Government should address whatever their point is to this Court, for the *DeCoteau* opinion cites similar statistics for the Lake Traverse area, specifically noting that within the original Lake Traverse Reservation boundaries there now "reside about 3,000 tribal members and 30,000 non-Indians. About 15 per cent of the land is in the form of 'Indian trust allotments.'" *DeCoteau*, *supra* at 428.

In these counties, as in *DeCoteau*, Respondents have exercised jurisdiction over the unallotted land of the former reservation for sixty-five years. As recently as 1967, the Eighth Circuit Court of Appeals affirmed the long line of decisions that recognized this jurisdiction. *Beardslee v. United States*, 387 F.2d 280 (CA 8 1967). With specific reference to the four counties in question, Judge Blackmun, now Justice Blackmun, succinctly stated that the unallotted land therein was "non-reservation land" with respect to 18 U.S.C. 1151. It was not within the boundaries of the Rosebud Reservation.

The Rosebud Reservation was established by, and is described in, § 2 of the Act of March 2, 1889, 25 Stat. 888. The boundaries of Todd County, in which the town of Mission is located, are laid down in S.D. Code, § 12.0162 (1939). All of Todd County is obviously within the original boundaries of the Rosebud Reservation. Only three Acts of Congress have affected the *territory* of the reservation since its establishment in 1889 and none of these concern

Todd County. Act of April 23, 1904, 33 Stat. 254; Act of March 2, 1907, 34 Stat. 1230; Act of May 30, 1910, 36 Stat. 448. No part of the Todd County portion of the reservation has ever been formally opened. Instead, that portion has remained closed since 1889. *The general geographical situation is thus clear.*

[With respect to 18 U.S.C. 1151] We regard clause (c) as applying to allotted Indian lands in territory *now open* and not as something which restricts the plain meaning of clause (a)'s phrase 'notwithstanding the issuance of any patent'. Although this result tends to produce some checkerboarding in *non-reservation land*, it is temporary and lasts only until the Indian title is extinguished. *Beardslee*, *supra* at 285, 287 (emphasis added).

The decision of this Court in *DeCoteau* correctly affirmed the rationale of *Beardslee* in terms of the applicability of 18 U.S.C. 1151(c). *DeCoteau*, *supra* at 446-447. See also, *United States v. Pelican*, 232 U.S. 442 (1914), cited with approval in *DeCoteau*, *supra* at 446-447.

In light of all of the above, the decision below could not possibly have a "revolutionary impact on reservation life" on the Rosebud Reservation. Pet. at 17. Todd County is the Rosebud Reservation and the status of Todd County is not in issue. In addition to the allotments which are still held in trust in the counties in question, the members of the Rosebud Sioux Tribe therefore have more than an adequate fulcrum from which to continue to conduct tribal affairs. This is the system that has functioned for the Rosebud Sioux Tribe in the past, and there is no reason to assume that it cannot continue to function in the future.

The assertion by Petitioner that the decision below will "open the way to destroy the reservation status" of untold portions of other reservations is similarly untenable. Pet. at 17. The court below, in recognition of one of the most fundamental principles of Federal Indian Law, stated that "obviously separate treaties and agreements with separate tribes

must be separately construed." Pet. App. A at 5. Under the guidance of *Seymour*, *Mattz* and *DeCoteau*, the language, legislative history and surrounding circumstances of each act will continue to be the controlling factor. Moreover, at least some of the areas affected by the acts selectively chosen by Petitioner to come within the purview of this "destruction" have not been recognized as parts of reservations for years. (for example, among others, items No. 10 and No. 18). Pet. App. D at 129.

As in *DeCoteau*, the decision below does constitute a refusal to judicially re-establish, under the guise of statutory construction, the boundaries of a reservation correctly held to have been disestablished for over sixty years. Perhaps this is the "destruction" to which Petitioner refers. The treatment accorded *DeCoteau* in the Federal Indian Law Reporter is in this respect enlightening.

In April of 1975, a specific section of the Indian Law Reporter was devoted entirely to *DeCoteau*. II ILR 3 at 53. Significantly, the Reporter did not question whether the issue was correctly decided by the Court in *DeCoteau*. Nor did it object to the manner in which the Court refused, under the guise of statutory construction, to disregard *clear* evidence of congressional intent. Rather, the entire article was addressed to the reasons why *DeCoteau* should never have been presented to the Court for a decision in the first place if "communication and coordination could have been initiated." II ILR 3 at 53.

In retrospect, the Reporter noted that in terms of "comprehensive law reform strategy" *DeCoteau* could have thwarted "efforts presently being conducted in Oklahoma aimed at *re-establishing* through the courts the *original* boundaries of several reservations." II ILR 3 at 53. In terms of "comprehensive law reform strategy," if the facts in *DeCoteau* were not the "most favorable" then the case "need not have proceeded to the Supreme Court in just this way." II ILR 3 at 53. In terms of "comprehensive law reform strategy"

this simply meant that next time there should be a "meeting" delineating the "strongest cases to be pursued" or at least "not weak cases to be pushing." II ILR 3 at 54. The "appropriate government agencies" would, of course, be invited to attend. II ILR 3 at 55.

The implications of this "comprehensive legal reform strategy" aimed at "*re-establishing*" *original reservation boundaries* when issues of *statutory construction* are presented to a court are disturbing to Respondents. Assuming, as the Reporter did, that *DeCoteau* was correctly decided and that surplus land statutes enacted pursuant to the General Allotment Act were clearly intended by Congress to disestablish portions of reservations, then what the Reporter was actually saying was that another act should have been "pursued" in which the intent of Congress could not have been made so clear. In this manner, this Court might have *misconstrued* the intent of Congress and the boundaries of many original reservations could have been "re-established." II ILR 3 at 53.

Respondents are not, nor could they afford to be, in the business of "comprehensive legal reform strategy." None of the reservation boundary cases have been initiated or filed by Respondent. The instant suit was filed by the Rosebud Sioux Tribe, although the filing was purportedly against the advice of present counsel. After the decision below, the Tribal Chairman of the Rosebud Sioux Tribe, Robert Burnette, publicly announced that:

The Rosebud Boundary Case was started in Federal Court, against the advice of the outstanding attorney, Marvin J. Sonosky, and, Robert Burnette. The Todd County Tribune, Mission, South Dakota, Vol. 55 No.44, Thursday, August 21, 1975.

In this context, if the decision of the Eighth Circuit Court of Appeals frustrates the ultimate designs of some individuals of *re-establishing original reservation boundaries* through the courts and *contrary to the original intent of Congress*, the In-

dian Law Reporter cannot be faulted. Nor can the court of appeals. Someone should have had a "meeting" and dismissed this case. The language, legislative history and surrounding circumstances of the Rosebud Acts made only too clear to the court of appeals what actually was the intent of Congress and the understanding of the Rosebud Sioux Tribe.⁷

B. The Decision Below is not in Conflict With the Decisions of This Court.

The decision below is fully in accord with the "guiding principles" of *Seymour*, *Mattz* and *DeCoteau*. *DeCoteau*, *supra* at 449. The opinion below accurately reflects what was clearly the intent of Congress and the understanding of the Rosebud Sioux Tribe. The court below studied with care the language, legislative history and surrounding circumstances of the three Rosebud Acts in order to insure that this was in fact the case.

Petitioner has attempted to bring *Rosebud* within the purview of the results in *Seymour* and *Mattz* by concentrating on the two paragraphs of noted differences at the end of the *DeCoteau* opinion. In this attempt Petitioner has ignored the principles enunciated in the other 23 pages of the *DeCoteau* opinion. The quest is not for a uniformity of results in utter disregard of the language, legislative history and surrounding circumstances of a given statute. That argument was rejected in *DeCoteau*: "A canon of construction is not a license to disregard clear expressions of tribal and congressional intent." *DeCoteau*, *supra* at 447.

In *Rosebud*, as in *DeCoteau*, the facts all point unmistakably to the same conclusion. In *Rosebud*, as in *DeCoteau*, the conclusion is that the Acts disestablished certain portions of the reservation. There is no question to present. There is no conflict. *Seymour*, *Mattz* and *DeCoteau* more than adequately represent the settled law.

7. In the absence of *DeCoteau* and the decision below, roughly one third of the entire state of South Dakota would have been engulfed by this process of "re-establishing" original reservation boundaries.

The other decisions of this Court cited by Petitioner that were decided in the late 1800's and early 1900's are inapposite. Pet. at 19. In each, the question then before the Court had nothing to do with congressional intent and the understanding of the tribe with respect to reservation boundaries. The tribe in *DeCoteau* presented a similar array of citations to these same cases. The Court in *DeCoteau* did not find them sufficiently relevant to even merit citation in the opinion.

The decision of *Ash Sheep Company v. United States*, 252 U.S. 159 (1920), can be viewed in a different light. Although the Court in *Ash Sheep* did not address a boundary question, the opinion is not entirely without relevance. However, rather than support Petitioner, *Ash Sheep* erodes the position of Petitioner by addressing one aspect of the "uncertain-sum-in-trust" provision.

In *Ash Sheep* the Court was presented with the question of whether the Crow Tribe retained a lingering beneficial interest in surplus lands which it had ceded under a 1904 act that contained the uncertain-sum-in-trust provision. The Court held that this beneficial interest did exist until the lands were filed or settled upon. *Ash Sheep*, *supra* at 166. Significantly, the nature of this lingering beneficial interest did not, however, alter the fact that the 1904 act which recited and ratified the Crow cession effectively disestablished the surplus area so ceded from the Crow reservation.

The Court in *Ash Sheep* did not directly address this aspect of the cession question. It was made clear on the face of the act. Because the area to be ceded could not be described by means of county subdivisions, new boundary lines were mentioned in the act in no less than five separate places. Act of April 27, 1904, 33 Stat. 352, 359, 360. Section 4 is an example of the language employed therein:

SECTION IV. That for the purpose of segregating the ceded lands from the diminished reservation, the new boundary lines described in Article I of this

Agreement shall when necessary be properly surveyed and permanently marked in a plain and substantial manner by prominent and durable monuments, the costs of said survey to be paid by the United States. Act of April 27, 1904, 33 Stat. 352, 355 (emphasis added).

Thus, in its opinion, the Court simply noted:

The agreement embodied in this act of Congress provided for a division of the Crow Indian Reservation in Montana on *boundary lines* which were described, and the lands involved in this case were within the part of the reservation as to which the Indians, in terms, 'ceded, granted and relinquished' to the United States all of their 'right, title, and interest.' *Ash Sheep Company, supra* at 164 (emphasis added).

The 1904 Crow Act did contain the uncertain-sum-in-trust provision, and it was intended and did effectively disestablish the ceded surplus portion of the reservation. The Bureau of Indian Affairs has confirmed that both the Bureau and the Crow Tribe have always recognized this fact. The Acts presented for construction herein, which also contain the uncertain-sum-in-trust provision, were also intended and did effectively disestablish the ceded surplus portions of the Rosebud Reservation. The Bureau of Indian Affairs and the Rosebud Sioux Tribe have also always recognized this fact.

C. The Decision Below is not in Conflict With any Decision of the Supreme Court of the State of South Dakota.

Petitioner fails to even acknowledge that since the date of the Rosebud Acts the position of the Supreme Court of the State of South Dakota has consistently been in accordance with the holding of the court below. On August 1, 1975, the opportunity for the court to again express that opinion was presented in *State v. White Horse*, No. 11319-a-JMD (S.D. filed August 1, 1975)

The single question of whether that portion of the original Rosebud Reservation situated in Tripp County was dis-

established by the Act of March 2, 1907, was before the court in *White Horse*. After a careful review of the same language, legislative history and surrounding circumstances that was analyzed below, and a careful review of the opinion below, the court in *White Horse* concluded:

On the basis of this decision and the congressional history quoted therein, as well as the further circumstance that the State of South Dakota has exercised criminal and civil jurisdiction over the years with the *full acquiescence of all responsible federal authorities*, we can see no justification requiring that the status be altered at this late date. We conclude that the Act of 1907 did disestablish that portion of the Rosebud Reservation containing Tripp County; therefore, the State of South Dakota has jurisdiction to prosecute the defendant in Tripp County for the offense charged. *White Horse, supra* at 6 (emphasis added).

Again, there is no question to present. There is no conflict. In *Seymour, Mattz* and *DeCoteau* the proper guidelines were set forth with sufficient clarity to have enabled both courts to reach the same conclusion.

D. The Decision Below is not in Conflict with Any Decision of Any Circuit Court of Appeals.

Significantly, the decision of the court below is the only federal appellate case on point to have been decided *after* the decision of this Court in *DeCoteau*. As a result, the Eighth Circuit Court of Appeals is the only federal appellate court that has as yet had the opportunity to resolve the issue presented in light of the guiding principles of *Seymour, Mattz* and *DeCoteau*. Prior to *DeCoteau*, as *DeCoteau* attests, some circuits might have thought a finding of disestablishment inconsistent with *Seymour* and *Mattz*. *DeCoteau, supra* at 447. The guidance of *DeCoteau* was necessary to quell this misconception. Respondents would submit that this Court give serious consideration to the possibility of at least allowing other circuits an opportunity to

analyze *DeCoteau* and then agree or disagree with the court below before any writ of certiorari on point is granted.

The position of Petitioner that *United States v. Washington*, 496 F.2d 620 (CA 9 1974) cert. den. 419 U.S. 1032, creates this conflict among the circuits is wholly untenable. In the first place, *Washington* was decided and certiorari was denied prior to the decision of this Court in *DeCoteau*. Secondly, even if the Ninth Circuit did not need the guidance of *DeCoteau*, the mere fact that the court in *Washington* found that the Puyallup Reservation was intended to continue to exist as such is indicative of nothing. A uniformity of result is not required if that result was not clearly the intent of Congress and the understanding of the Tribe. The end result of *Seymour*, *Mattz* and *DeCoteau* are proof positive of this fact.

Respondents doubt that the two paragraph *per curiam* opinion of the Ninth Circuit Court of Appeals would be of much assistance to this Court in this respect. The 1893 Act construed in *Washington* was merely an undifferentiated part of an appropriation statute that received only summary treatment by Congress. In fact, another tribe has since conceded that because of the striking dissimilarity of the 1893 Act in *Washington*, it could not be compared to acts similar to those presented in the instant case. Brief for Appellant at 8, *United States ex rel. Cook v. Parkinson*, No. 75-1306 (CA 8, filed Oct. 29, 1975). Respondents agree.

Again, there is no question to present. There is no conflict. Moreover, this Court should be reluctant to grant any petition for certiorari on point at least until other circuits have had an opportunity to analyze *DeCoteau* and the decision below.

E. The Decision Below Is Clearly Correct.

As Respondents stated in the Statement of Facts, no attempt will be made within the confines of this Brief in Opposition to support the decisions below in terms of specific evidence of congressional intent. This material is set forth persuasively in the opinions below. The content and structure

of the Petition itself in many material respects, however, lends additional credence to the decisions below. These areas are worthy of the further attention of the Court.

1. In the court below, two entire pages of the opinion were addressed to the fundamental constitutional basis of *Lone Wolf v. Hitchcock*, *supra*. Before this Court the Petition is still saturated with innuendos that ignore the rationale and effect of the decision. The innuendos are almost a concession that with respect to *intent* and *understanding*, the decision below is correct.

Respondents have never expressed any opinion that necessarily condones, approves or supports the General Allotment Act or the actions of the federal government pursuant to the policy expressed therein. Nevertheless, proof of the continuing validity of the *Lone Wolf* doctrine is the present procedure still available to Indian tribes to remedy an alleged breach of a fiduciary duty by the Government. Congress is still the "body" referred to in the *Lone Wolf* opinion from which the Constitution directs that redress must be obtained. In the past, a remedy has been provided by Congress through proper suit brought before the United States Court of Claims and its Indian Claims Commission. In the future it might well be that other remedies will be authorized by and obtained from Congress.

Counsel for Petitioner is a highly skilled and acknowledged Indian Claims attorney. *Lone Wolf* was not even cited by Petitioner in the court below, and is only before this Court by innuendo. If Petitioner has a meritorious issue, Respondents are confident that counsel for Petitioner will not rest until that issue is satisfactorily resolved. But the issue before this Court, as stated in *DeCoteau*, is a "narrow" one — the intent of Congress and the understanding of the tribe.

Thousands of individuals have had to rely upon the intent of Congress since the date of the Acts in question. With the benefit of hindsight, many chapters of American history might be rewritten. As the court below noted, however, it did

not "sit to rewrite the legislation of decades past." Pet. App. B at 6. A canon of construction is not, as noted in *DeCoteau*, "a license to disregard clear expressions of tribal and congressional intent." *DeCoteau*, *supra* at 447.

2. Another notable characteristic of the Petition is the rather conspicuous absence of any citations to or quotations from any document of the period in substantial support of the sophisticated argument therein. In the hundreds of pages of congressional documents that are concerned with the Rosebud legislation, certainly one document should have contained one paragraph as an express manifestation that Congress and the Rosebud Sioux Tribe actually intended the boundaries of the original Rosebud Reservation to remain intact. This is especially so in light of the fact that this intent would have necessarily been a *departure* from what this Court in *DeCoteau* found to be the *rule* rather than the *exception*. Moreover, when one considers the unequivocal references to the contrary set forth in the opinions below, the absence of even this one paragraph becomes something more than an anomaly.

The kind of documentation that is presented in the Petition in support of the minor arguments that *en masse* are meant to constitute evidence of this intent, was rejected in *DeCoteau*. It was not deemed a reliable source from which to ascertain the intent of Congress or the understanding of the tribe in *DeCoteau* because it was not founded on the language, legislative history or surrounding circumstances of the Act in question. Moreover, it was in irreconcilable conflict with express manifestations therein to the contrary. In *Rosebud*, as in *DeCoteau*, an argument founded on this kind of documentation could not be persuasive.

3. A related characteristic of the Petition that lends credence to the opinions below is the manner in which the Petition fails to directly address or offer alternative constructions to those documents deemed persuasive below. Prior to *DeCoteau*, Petitioner simply discounted all legislative

history. "There is no occasion here to discuss the phrase 'restored to the public domain' because it does not appear in any of the Rosebud statutes." Brief for Appellant below at 28. In this manner Petitioner avoided addressing all Rosebud references to this effect in the Senate and House Documents and the *Congressional Record*, as well as other references of an equally probative nature.

Subsequent to *DeCoteau*, Petitioner even used *DeCoteau* in partial support of this position. In one segment of the *DeCoteau* opinion the Court noted that after the 1889 Agreement was concluded only three aspects of the legislative history were of particular significance. This was result of the fact that many agreements were ratified by the 1891 Act and the Act itself was merely a part of the general appropriation statute dealing with all areas of Indian affairs. The subsequent legislative history was largely irrelevant in *DeCoteau*. The Court expressed this thought in the following manner:

While the subsequent legislative history is largely irrelevant to the issues before us, three aspects bear notice. *DeCoteau*, *supra* at 437-438.

Petitioner presented the sentence to the court below in an entirely different manner:

The Court indicated that the legislative history after the agreement was sent to Congress was hardly relevant, stating (___U.S.___, 43 L.ed at p. 3107):

'While the subsequent legislative history is largely irrelevant to the issues before us* * *.' Petition for rehearing en banc below at 7, n. 12.

Thus, according to Petitioner, all Rosebud legislative history subsequent to the Rosebud Agreements was equally irrelevant. This most certainly is not the context in which the statement was made in *DeCoteau*. The citations to each and every source of probative evidence in *DeCoteau* confirm this fact. Nevertheless, it did constitute another reason, although

clearly untenable, for Petitioner to avoid addressing the persuasive evidence of Congressional intent inherent in the Rosebud documents. Before this Court the position of Petitioner is essentially the same. Those references which Petitioner cannot attribute to an "erroneous understanding" or "mistaken belief" are simply ignored. The decisions below are persuasively documented in terms of the intent of Congress and understanding of the Rosebud Sioux Tribe. This documentation cannot be eroded *sub silentio*.⁸

CONCLUSION

For the reasons set forth above, the Petition for Certiorari should be denied.

Respectfully submitted,

William J. Janklow
Attorney General for South Dakota

William F. Day, Jr.
Attorney for the Four Counties

Tom D. Tobin
Special Assistant Attorney General

Attorneys for Respondents

November, 1975

8. Respondents are cognizant of the admonition in *DeCoteau* that competing policy pleas are not properly within the scope of the "narrow task" of this Court. *DeCoteau*, *supra* at 449. For this reason Respondents have not set forth certain facts that would more than counter all of the policy arguments presented in the Petition.

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

74-1211

September Term, 1975

Rosebud Sioux Tribe,)	
)	
Appellant,)	
)	Appeal from the United States
vs.)	District Court for the
)	District of South Dakota
Honorable Richard Kneip,)	
etc., et al.,)	
)	
Appellees.)	

Appellant's motion for leave to file enlarged petition for rehearing en banc out of time has been considered by the Court and is denied.

September 16, 1975

Supreme Court, U. S.

FILED

DEC 5 1975

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

October Term, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

**BRIEF FOR THE STATE OF NORTH DAKOTA,
ET AL., AS AMICI CURIAE IN OPPOSITION**

Allen I. Olson
Attorney General
State of North Dakota
Capitol Building
Bismarck, North Dakota 58505

Gerald W. VandeWalle
Chief Deputy Attorney General
State of North Dakota
Capitol Building
Bismarck, North Dakota 58505

(Other States Joining Set Forth On Inside Cover)

The following States, by their respective Attorneys General, join in the views expressed herein:

Wayne L. Kidwell Attorney General State of Idaho	Paul L. Douglas Attorney General State of Nebraska
Richard C. Turner Attorney General State of Iowa	Robert List Attorney General State of Nevada
Curt T. Schneider Attorney General State of Kansas	Antonio Anaya Attorney General State of New Mexico
Robert L. Woodahl Attorney General State of Montana	Bronson C. LaFollette Attorney General State of Wisconsin

V. Frank Mendicino
Attorney General
State of Wyoming

Certain other interested States such as California did not have an opportunity to fully examine the merits of the question presented prior to the printing of this *amici curiae* Brief in Opposition. The Office of the Clerk will be advised directly if they elect to join in the views expressed herein.

TABLE OF CONTENTS

TABLE OF CITATIONS	i
QUESTION PRESENTED	1
INTEREST OF AMICI CURIAE	1
ARGUMENT	
I. CONGRESS CONSIDERED THE ROSEBUD LEGISLATION WITHIN THE SAME HISTORICAL CONTEXT AS THE 1891 ACT RECENTLY CONSTRUED IN <i>DECOTEAU V. DISTRICT COUNTY COURT</i> , 420 U. S. 425 (1975)	2
II. <i>SEYMOUR, MATTZ</i> AND <i>DECOTEAU</i> SET FORTH WITH CLARITY THE GUIDING PRINCIPLES THAT ARE CONTROLLING	6
III. THE INTENT OF CONGRESS AND THE UNDERSTANDING OF THE ROSEBUD SIOUX TRIBE MAKE CLEAR THE EFFECT OF THE ROSEBUD LEGISLATION	9
CONCLUSION	11

TABLE OF CITATIONS

CASES;

<i>Blackfeather v. United States</i> , 190 U.S. 368 (1903)	8
<i>Cherokee Nation v. Hitchcock</i> , 187 U. S. 294 (1902)	8
<i>Choate v. Trapp</i> , 224 U. S. 665 (1912)	8
<i>DeCoteau v. District County Court</i> , 420 U. S. 425 (1975)	2, 3, 6, 8, 9, 10, 11
<i>Ex Parte Webb</i> , 225 U. S. 663 (1912)	8
<i>Lone Wolf v. Hitchcock</i> , 187 U. S. 553 (1903)	6, 7, 8
<i>Mattz v. Arnett</i> , 412 U. S. 481 (1973)	6, 8, 9, 10, 11

Nadeau v. Union Pacific R.R. Co., 253 U. S. 442 (1920)	8
Roff v. Burney, 168 U. S. 218 (1897)	8
Seymour v. Superintendent, 368 U. S. 351 (1962)	6, 8, 9, 10, 11
Sioux Indians v. United States, 277 U. S. 424 (1928)	8
Stephens v. Cherokee Nation, 174 U. S. 445 (1899)	8
United States v. Osage County, 251 U. S. 128 (1919)	8
MISCELLANEOUS AUTHORITIES:	
Act of February 8, 1887, 24 Stat. 388 (1887) (General Allotment Act)	1
F. Cohen, HANDBOOK OF FEDERAL INDIAN LAW (University of New Mexico Press)	7, 8
38 Cong. Rec. 1423 (1904)	3
45 Cong. Rec. 5788 (1910)	5
H. R. Rep. No. 7613, 59th Cong. 2nd Sess. 3-4 (1907)	3, 4, 5

IN THE
Supreme Court of the United States

October Term, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

**BRIEF FOR THE STATE OF NORTH DAKOTA,
ET AL., AS AMICI CURIAE IN OPPOSITION**

QUESTION PRESENTED

Whether three surplus land statutes enacted pursuant to the General Allotment Act of 1887 were intended by Congress and understood by the members of the Rosebud Sioux Tribe to disestablish certain portions of the original Rosebud Reservation.

INTEREST OF AMICI CURIAE

The State of North Dakota and the other States joining herein have a general interest in the manner in which any question of Federal Indian Law is resolved. In terms of the instant case, however, there is an overriding consideration that merits particular attention. Namely, the arguments in the

Petition that are directed at circumventing the intent of Congress and the understanding of the Tribe. Because of a similar concern in *DeCoteau v. District County Court*, 420 U.S. 425 (1975), a Brief for the State of North Dakota et al., as *amici curiae* was also submitted therein for the consideration of the Court. After *DeCoteau*, which was a commendable decision in our view, litigation aimed at re-establishing original reservation boundaries contrary to the intent of Congress should have been laid to rest. Unfortunately, this was not necessarily so. For this reason, the proceedings below were of a continuing interest to all. As in *DeCoteau*, the decision of the Eighth Circuit Court of Appeals when announced, was received with approval and deservedly so. After notification was received that a Petition for a Writ of Certiorari would be filed with this Court, the opinion and certain of the briefs were again carefully examined and considered by each state. It is the consensus of *amici curiae*, without exception, that the decision of the Eighth Circuit Court of Appeals is in conformity with all of the "guiding principles" set forth and reiterated in *DeCoteau*. This Brief is respectfully submitted in opposition to a Petition that would truly turn on their heads not only *DeCoteau* and the general principles governing the construction of Indian statutes, but also every fundamental premise which Congress, the States, and the Tribes have justifiably relied on for decades. All arguments are intended to support and supplement those set forth at length in the Brief for Respondents in Opposition.

ARGUMENT

I

CONGRESS CONSIDERED THE ROSEBUD LEGISLATION WITHIN THE SAME HISTORICAL CONTEXT AS THE 1891 ACT RECENTLY CONSTRUED IN *DECOTEAU V. DISTRICT COUNTY COURT*, 420 U.S. 425 (1975).

The primary thrust of the Brief for Respondents in Opposition is directed to the fact that the historical circumstances

set forth in *DeCoteau* are the same as those underlying the Rosebud legislation. In further support of this position, it should be noted that the Rosebud legislative history specifically confirms that the intent of Congress remained the same. In a number of instances, the individuals primarily responsible for the three Rosebud Acts stated that the significant provisions of the 1891 Act construed in *DeCoteau* constituted "precedent" for similar provisions in the Rosebud legislation.

The most lucid example of this "precedent" appears in conjunction with the school lands grant. In congressional debate, Congressman Burke of South Dakota never faltered in his explanation of the condition precedent to the grant that was set forth in the South Dakota Enabling Act:

Mr. Burke: I am glad that the gentleman has asked me that question. I would state that under the enabling act under which the State of South Dakota was admitted to the Union it was provided that sections 16 and 36 in said State should be reserved for the use of the common schools of that State, and it further provided that as to the lands within an Indian reservation the provisions of that grant would not become operative until the reservation was extinguished and the land restored to the public domain. That enabling act was passed by Congress on the 22nd day of February, 1889. 38 Cong. Rec. 1423 (1904) (emphasis added).

Since the Rosebud legislation was intended to extinguish the surplus portion of the Rosebud Reservation and restore it to the public domain, as other surplus land statutes had in the past, the school lands grant had to be included in each Rosebud Act. Significantly, all of the earlier surplus land statutes that contained the grant, which are conceded in the Petition to have satisfied the condition precedent in the enabling act, including the 1891 Act construed in *DeCoteau*, are listed as "precedent" for the Rosebud grant in the 1907 Rosebud House Report submitted by Congressman Burke on behalf of the House Committee on Indian Affairs:

Section 6 of the bill reserves section 16 and 36 in each township for the use of the common schools, and grants the same to the State of South Dakota, and section 7 makes an appropriation to pay for the same at \$2.50 per acre. *This is following the precedents which have heretofore been established in the opening of other reservations in South Dakota*, and is based upon section 10 of the act of Congress admitting South Dakota into the Union, approved February 22, 1889. Said section is as follows:

'Sec. 10: That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any part thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such a manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*. That the sixteenth and thirty-sixth section embraced in permanent reservations for national purposes shall not at any time be subject to the grants nor to indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act **until the reservation shall have been extinguished and such lands restored to and become a part of the public domain.**'

The following are the precedents:

By section 30 of the Act opening and dividing the Great Sioux Reservation, sections 16 and 36 were granted to the State and an appropriation of \$1.25

per acre was made to pay for same. Act approved March 2, 1889. (25 Stat. L., 898).

By section 30, Act approved March 3, 1891, opening the Sisseton and Wahpeton Reservation, the school sections were ceded to the State and an appropriation made, and the same were paid for at \$2.50 per acre. (26 Stat. L., 1039).

By Act of August 15, 1894, opening the Yankton Reservation, the school sections were ceded to the State and paid for at \$3.75 per acre. (28 Stat. L., 313). H. R. Rep. No. 7613, 59th Cong., 2d Sess. 3-4 (1907) (emphasis added).

In later congressional debate on another bill, Congressman Burke's counterpart in the Senate, Senator Gamble of South Dakota, viewed the Rosebud legislation from the same perspective:

That is the obligation of the Government and the contract entered into in the enabling act; and since the admission of these States it has been the policy of the Government to pay the Indian tribes the price fixed for sections 16 and 36. *As I have recited upon a former occasion, on the opening of the Sisseton Reservation, in the northeastern part of the State, \$2.50 per acre was paid by the Government to the Indians for the cession of the lands in sections 16 and 36, and \$3.50 was paid per acre on the opening of the Yankton Reservation in the same State.* The same policy has been pursued in connection with the opening of Gregory County, a part of the Rosebud Reservation, for which \$2.50 per acre was paid. The same is true as to lands in Tripp County, in the Rosebud Reservation, and in two bills already passed during the present session for the opening of other lands in the Rosebud Reservation . . . 45 Cong. Rec. 5788 (1910) (emphasis added).

Thus, apart from the fact that the school lands grant constitutes persuasive evidence of disestablishment *per se*, the "precedent" for the grant listed by the two co-sponsors of the Rosebud legislation clearly places the Rosebud legislation

squarely within the historical context of *DeCoteau*. In terms of the question presented, the intent of Congress remained the same.¹

II

SEYMOUR, MATTZ AND DECOTEAU SET FORTH WITH CLARITY THE GUIDING PRINCIPLES THAT ARE CONTROLLING.

The Petition seeks to circumvent the intent of Congress and the understanding of the Rosebud Sioux Tribe by asserting that the Rosebud Acts were "unilateral" in nature. Inherent in this assertion is an assumption that such a situation would automatically lead this Court to a conclusion similar to that reached in *Seymour v. Superintendent*, 368 U. S. 351 (1962), and *Mattz v. Arnett*, 412 U. S. 481 (1973). In both respects the Petition is not persuasive.

In the first instance, the Brief for Respondents in Opposition erodes the basis for the assertion. The Rosebud Acts were not unilateral actions by Congress. A majority of the adult male members of the Rosebud Sioux Tribe consented to each Act. Brief for Respondents at 23, 27, 29. Secondly, even if an example of unilateral congressional action would have presented, this fact alone has never in the past precluded this Court from accepting the judgment of Congress in this respect. On numerous occasions similar pleas have been rejected by this Court and the basic constitutional reasons for this rejection merit special attention. Although the landmark decision of *Lone Wolf v. Hitchcock*, 187 U. S. 553 (1903), was cited and explained by Respondents, *amici curiae* deem the analysis of Justice White deserving of more extended treatment:

1. In *DeCoteau* this court noted that the intended effect of the 1891 Act was "made clear by the sponsors of the comprehensive legislation." *DeCoteau*, *supra* at 440. The tenor of the passage of the Congressional Record set forth in support of this conclusion in *DeCoteau* is echoed by the *sponsors* of the Rosebud legislation throughout the legislative history. Pet. App. A at 17-19, 29, 50-52.

Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the Government

In view of the legislative power possessed by Congress over treaties with the Indians and Indian tribal property we may not specially consider the contentions pressed upon our notice that the signing by the Indians of the agreement of October 6, 1892, was obtained by fraudulent misrepresentations and concealment; that the requisite three-fourths of adult male Indians had not signed, as required by the twelfth article of the treaty of 1867, and that the treaty as signed had been amended by Congress without submitting such amendments to the action of the Indians, since all these matters, in any event, were solely within the domain of the legislative authority, and its action is conclusive upon the courts

In any event, as Congress possessed full power in the matter, the judiciary can not question or inquire into the motives which prompted the enactment of this legislation. If injury was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought by an appeal to that body for redress and not to the courts. The legislation in question was constitutional, and the demurrer to the bill was therefore rightly sustained. *Lone Wolf*, *supra* at 557.

All aspects of *Lone Wolf* represent the very foundation of Federal Indian Law. Felix S. Cohen, an acknowledged expert in this area of the law, addressed the ramifications of the principles enunciated in *Lone Wolf* in his treatise on Federal Indian Law at 94-115. In Cohen's words:

The control by Congress of tribal lands has been one of the most fundamental expressions, if not the *major* expression, of the constitutional power of Congress over Indian affairs, and has provided most frequent occasion for judicial analysis of that

power. From the wealth of judicial statement there may be derived the basic principle that Congress has a very wide power to manage and dispose of tribal lands. F. Cohen, *HANDBOOK OF FEDERAL INDIAN LAW* 94-95 (University of New Mexico Press) (emphasis added).

The analysis is supported by citations to decisions such as *Roff v. Burney*, 168 U. S. 218 (1897); *Stephens v. Cherokee Nation*, 174 U. S. 445 (1899); *Cherokee Nation v. Hitchcock*, 187 U. S. 294 (1902); *Blackfeather v. United States*, 190 U. S. 368 (1903); *Choate v. Trapp*, 224 U. S. 665 (1912); *Ex parte Webb*, 225 U. S. 663 (1912); *United States v. Osage County*, 251 U. S. 128 (1919); *Nadeau v. Union Pacific R. R. Co.*, 253 U. S. 442 (1920); *Sioux Indians v. United States*, 277 U. S. 424 (1928) as well as *Lone Wolf*, *supra*.

The Petition does not ask this Court to overrule *Lone Wolf* or any of the above decisions. Indeed, this issue was not even raised in the court below. Rather, the Petition has simply lifted the term "unilateral" from the two paragraphs of differences noted by this Court at the end of the opinion in *DeCoteau*. Armed with the term, the Petition then asserts that this Court has *held* that statutes unilaterally enacted by Congress do not disestablish portions of reservations. The singular fact that the acts in *Seymour* and *Mattz* were unilateral in nature was but one of many of the differences set forth in the two paragraphs of the *DeCoteau* opinion. Among others, the Court also noted that the circumstances surrounding congressional action therein "militated persuasively against" a finding of disestablishment. *DeCoteau*, *supra* at 448. No *holding* of this Court has ever approached the force of the assertion presented in the Petition. *Lone Wolf et al.*, *supra*, are persuasive documentation of this fact. This attempt of the Petition to bring the Rosebud legislation within the specific fact situations that militated persuasively against disestablishment in other cases on other reservations cannot be persuasive. The facts in Rosebud definitely do not militate persuasively against a finding of disestablishment.

Moreover, the opinions in all three decisions make clear that the overriding issue was congressional intent and the understanding of the tribe. In *Seymour* this Court stressed that it was:

unable to find where *Congress* has taken away from the Colville Indians any part of the land within the boundaries of the area which has been recognized as their reservation since 1892. *Seymour*, *supra* at 359 (emphasis added)

In *Mattz*, this Court stated that the case:

turns on the resolution of the *narrow question* whether the Klamath River Indian Reservation in northern California was terminated by *Act of Congress*. *Mattz*, *supra* at 483 (emphasis added).

The task of the Court in *Mattz* was succinctly stated.

It is our task, in light of the language and purpose of the Act, as well as of the historical background, outlined above, *to determine the proper meaning of the Act* and, consequently, the current status of the reservation. *Mattz*, *supra* at 495 (emphasis added).

DeCoteau reiterated that the "task here is a *narrow one*." *DeCoteau*, *supra* at 449 (emphasis added). The issue presented was one of statutory construction. In the instant case, the issue remains the same.

III

THE INTENT OF CONGRESS AND THE UNDERSTANDING OF THE ROSEBUD SIOUX TRIBE MAKE CLEAR THE EFFECT OF THE ROSEBUD LEGISLATION.

Had the Petition raised any question worthy of the jurisdiction of this Court that had heretofore not been resolved, *amici curiae* would not have strenuously opposed the issuance of a Writ of Certiorari. But such a question has not been raised.

This Court has expended sufficient time and effort in *Seymour, Mattz* and *DeCoteau* to set forth with clarity the "guiding principles" that are controlling. The decision below is in conformity with those principles.

Although the Petition is couched in terms of a disaster that is eminent if the decision below is allowed to remain intact, *Seymour, Mattz* and *DeCoteau* preclude a blanket application of the *result* of any one case to the fact situation in another. To accurately ascertain the intent of Congress and the understanding of each tribe in even the multitude of statutes set forth in the Petition would take an entire staff of attorneys a number of months.² In at least some instances, as in *DeCoteau* and the case at bar, a conclusion similar to that reached below would not result in a destruction of any portion of any reservation that has been *recognized* as such since the passage of the statute in question. Even in these instances, however, some court must have an opportunity to view the facts presented in order to establish if the recognition of disestablishment was in conformity with the intent of Congress and the understanding of the tribe. In other instances this intent and understanding might preclude a finding of disestablishment as in *Seymour* and *Mattz*.

But this is all speculation, pure and simple. Speculation does not present a fact situation with which this Court can be concerned. Other petitions for a writ of certiorari can continue to provide access to this Court in any situation where someone asserts that a court below has departed from the "guiding principles" of *Seymour, Mattz* and *DeCoteau*. In this case, the Petition is not persuasive. The court below

2. A general compilation of surplus land statutes enacted subsequent to 1887 in the National Indian Law Library, Boulder, Colorado, lists 75 separate entries. N.I.L.L. No. 002279. At least 43 of these statutes should have been included in the table set forth as Appendix D in the Petition. Although they are not categorized along the lines of the new definition of a surplus land statute that emerges in the Petition, all 43 statutes are definitely within the structure of that definition. The author of the compilation did not even attempt to set forth either the legislative or the jurisdictional history of any of the statutes.

followed the "guiding principles" of *Seymour, Mattz* and *DeCoteau*.

CONCLUSION

For the reasons set forth above, the Petition for Certiorari should be denied.

Respectfully submitted,

Allen I. Olson
Attorney General
State of North Dakota

Gerald W. VandeWalle
Chief Deputy Attorney General
State of North Dakota

December, 1975

Supreme Court, U. S.
FILED

AUG 9 1976

MICHAEL ROBAX, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE TRIBE

MARVIN J. SONOSKY

2030 M Street, N.W.

Washington, D.C. 20036

Attorney for the Petitioner.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATUTES INVOLVED	2
STATEMENT	3
SUMMARY OF ARGUMENT	16
ARGUMENT	23
I. All of the Rosebud Indian Reservation as established by Congress is Indian country	23
II. There was no cession, tribal title was not extinguished, and none of the land was "restored" or otherwise made part of the public domain	29
A. There was no cession	29
B. There was no payment	32
C. The land did not become part of the public domain	33
D. Selected phraseology does not support the court's conclusion that reservation status was terminated	36
1. The words of cession lifted from the 1901 agreement and repeated in the 1904 Act have no legal effect	36
2. The language in the 1902 debates and the 1904 Act committee reports does not support termination	36
3. McLaughlin's phrases do not support termination	38
III. The express language of the three Rosebud acts affirmatively compels rejection of the thesis of termination of reservation status	40

(ii)

	<u>Page</u>
A. The express language of the last section of each of the three statutes establishes that the United States did not purchase and the Tribe did not sell any land	41
B. The express language requiring that the proceeds of sales be credited to the Tribe in the Treasury confirms that neither Indian title nor the reservation was extinguished	42
C. The language of the three Acts reaffirming treaty benefits denies an intent to extinguish the reservation	44
D. The language of the three Acts reserving tribal land for Indian purposes affirmatively supports an intent to continue the reservation status	46
E. The townsite provisions affirmatively support an intent to continue the reservation status	46
F. The allotment provisions do not support termination by implication and confirm that none of the three Rosebud Acts terminated any part of the Rosebud Reservation	47
G. The school land grant provisions of the three statutes affirmatively confirm that Congress did not terminate any part of the reservation	56
H. The liquor law provisions of the 1910 Act affirmatively confirm that Congress did not terminate the reservation status	59
IV. Subsequent legislation does not support termination	63
V. Congress and the Department of the Interior have consistently treated and administered the opened areas as part of the Rosebud Reservation	65

(iii)

	<u>Page</u>
A. Congress has consistently appropriated for the entire reservation	65
B. The opened areas were administered as part of the reservation	65
C. The construction and administration of the Indian Reorganization Act of June 18, 1934, confirms that the Department of the Interior did not regard any part of the Rosebud Reservation as terminated	67
1. Section 19 of the Indian Reorganization Act (25 U.S.C. 479)	67
2. Sections 2 and 8 of the Indian Reorganization Act (25 U.S.C. 462, 468)	68
3. Section 3 of the Indian Reorganization Act of 1934 (25 U.S.C. 463)	70
D. The Secretary of the Interior approved the Tribal Constitution defining the reservation as delimited in the 1889 Act	70
E. The Field Solicitor for the Department of the Interior considered that no part of the reservation was disestablished	71
CONCLUSION	72
APPENDIX	
Act of April 23, 1904, c. 1484, 33 Stat. 254, 3 Kappler 71	1a
Act of March 2, 1907, c. 2536, 34 Stat. 1230, 3 Kappler 307	7a
Act of May 30, 1910, c. 260, 36 Stat. 443, 3 Kappler 459	10a
List of surplus land statutes enacted 1904-1913	14a
Section 12 of the Act of March 2, 1889, c. 405, 25 Stat. 888	15a

(iv)

	<u>Page</u>
Section 2 of the Indian Reorganization Act of June 18, 1934, c. 576 48 Stat. 984 (25 U.S.C. 462)	16a
Section 8 of the Indian Reorganization Act of June 18, 1934, c. 576, 48 Stat. 984 (25 U.S.C. 468)	16a
Map of the Rosebud Reservation.....	17a

TABLE OF CITATIONS

Cases:

Ash Sheep Co. v. United States, 252 U.S. 159 (1920)	34, 44
Barker v. Harvey, 181 U.S. 481 (1901)	33
Bates v. Clark, 95 U.S. 204 (1877)	60
Bennett County, South Dakota v. United States, 394 F.2d 8 (C.A. 8, 1968)	33
Borax Consolidated v. City of Los Angeles, 296 U.S. 10 (1935)	33
Bryan v. Itasca County, Minnesota, ____U.S.____, No. 75-5027, June 15, 1976	26, 27, 72
Chippewa Indians v. United States, 301 U.S. 358 (1937)	58, 62
Choctaw Nation v. United States, 119 U.S. 1 (1886)	28
Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970)	50
City of New Town, North Dakota v. United States, 454 F.2d 121 (C.A. 8, 1972)	45, 64
Clairmont v. United States, 225 U.S. 551 (1912)	59
Confederated Salish & Kootenai Tribes v. United States, 193 Ct. Cl. 801, 437 F.2d 458 (1971)	30
Cook v. State, ____S.D.____, 215 N.W.2d 832 (1974)	29
Creek Nation v. United States, 302 U.S. 620 (1938)	30
DeCoteau v. District County Court, 420 U.S. 425 (1975)	24, 32, 47

(v)

Cases, continued:

	<u>Page</u>
Dick v. United States, 208 U.S. 340 (1908)	35, 59, 61
Hallowell v. United States, 211 U.S. 317 (1911)	60
Leavenworth, etc., R.R. Co. v. United States, 92 U.S. 733 (1876)	33
Lone Wolf v. Hitchcock, 187 U.S. 553 (1903)	9, 31
Lower Sioux Indian Community in Minnesota v. United States, 30 Ind. Cl. Comm. 463 (1973), affirmed, ____Ct. Cl.____, 519 F.2d 1378 (1975)	30
Matter of Heff, 197 U.S. 448 (1905)	60
Mattz v. Arnett, 412 U.S. 481 (1973)	47, 55, 56, 64
McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973)	27
Menominee Tribe v. United States, 391 U.S. 404 (1968)	27
Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973)	67
Minnesota v. Hitchcock, 185 U.S. 373 (1902)	33, 34, 44, 56, 57, 58
Missouri, K. & T. R. Co. v. United States, 235 U.S. 37 (1914)	33
Morton v. Ruiz, 415 U.S. 199 (1973)	43
Northern Cheyenne Tribe v. Hollowbreast, ____U.S. ____, 48 L.Ed.2d 274 (1976)	26, 27
Peoria Tribe of Indians v. United States, 390 U.S. 468 (1968)	50
Putnam v. United States, 248 F.2d 292 (C.A. 8, 1957)	69
Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (C.A. 9, 1975)	27
Seminole Nation v. United States, 316 U.S. 286 (1942)	28
Seymour v. Superintendent, 368 U.S. 351 (1962)	55, 70

(vi)

*Cases, continued:*Page

Sioux Tribe v. United States, 97 Ct. Cl. 613 (1942), certiorari denied 318 U.S. 789	4
Sioux Tribe v. United States, 205 Ct. Cl. 148, 500 F.2d 458 (1974)	4
Squire v. Capoeman, 351 U.S. 1 (1956)	68
Three Tribes of Fort Berthold Reservation v. United States, 182 Ct. Cl. 543, 390 F.2d 686 (1968)	30
United States v. Brindle, 110 U.S. 688 (1884)	34, 44
United States v. Celestine, 215 U.S. 278 (1909)	26
United States ex rel. Condon v. Erickson, 478 F.2d 684 (C.A. 8, 1973)	55, 60
United States ex rel. Cook v. Parkinson, 525 F.2d 120 (C.A. 8, 1975), pending on petition for a writ of certiorari, No. 75-5867 filed December 8, 1975	69
United States v. Kagama, 118 U.S. 375 (1886)	28
United States v. LeBris, 121 U.S. 278 (1887)	60
United States v. Mazurie, 419 U.S. 544 (1975)	61
United States v. Mille Lac Band, 229 U.S. 498 (1913)	34, 44
United States v. Nice, 241 U.S. 591 (1916)	60
United States v. O'Brien, 391 U.S. 367 (1967)	58, 62
United States v. Payne, 264 U.S. 446 (1924)	28
United States v. Pelican, 232 U.S. 442 (1914)	60
United States v. Shoshone Tribe, 304 U.S. 111 (1938)	50
United States v. Wyoming, 331 U.S. 440 (1947)	30
Wright v. Mountain Trust Bank, 300 U.S. 440 (1937)	62

Treaties and Statutes:

Treaty of July 19, 1815, 7 Stat. 125	3
Treaty of June 22, 1825, 7 Stat. 250	3
Treaty of July 5, 1825, 7 Stat. 252	3

(vii)

*Treaties and Statutes, continued:*Page

Treaty of July 16, 1825, 7 Stat. 257	3
Treaty of September 17, 1851, 11 Stat. 749	4
Treaty of April 29, 1868, 15 Stat. 635	4, 44
Act of March 3, 1863, c. 80, sec. 1, 12 Stat. 754, 43 U.S.C. 711-727	46
Act of February 28, 1877, 19 Stat. 254	4
Act of January 14, 1889, c. 24, sec. 1, 25 Stat. 642	34
Act of February 22, 1889, c. 180, 25 Stat. 676	56
Act of March 2, 1889, c. 405, 25 Stat. 888	4
Act of March 3, 1891, c. 543, 26 Stat. 989	35, 46
Act of July 23, 1892, c. 234, 27 Stat. 260	59
Act of March 3, 1901, c. 832, 31 Stat. 1058, 1077	6
Act of April 23, 1904, c. 1484, 33 Stat. 254	2, 7, 11
Act of March 2, 1907, c. 2536, 34 Stat. 1230	2
Act of May 29, 1908, c. 218, 35 Stat. 460	55
Act of March 3, 1909, c. 263, 35 Stat. 781	63
Act of March 26, 1910, c. 129, sec. 2, 36 Stat. 265	63
Act of May 30, 1910, c. 260, 36 Stat. 448	2
Act of May 28, 1914, c. 102, sec. 1, 38 Stat. 383	63
Act of June 18, 1934, c. 576, 48 Stat. 984, 25 U.S.C. 461 et seq.	67
Act of June 25, 1948, c. 645, 62 Stat. 757, as amended (18 U.S.C. 1151)	2, 17, 23, 59
Act of August 20, 1964, 78 Stat. 560	63
Act of October 17, 1975, 89 Stat. 577	64

Congressional References:

35 Cong. Rec. 243	6
35 Cong. Rec. 388	6
S. Rept. 94-377, 94th Cong., 1st sess., pp. 1, 3 (1975)	64

Congressional References, continued:

	Page
H. Rept. 94-480, 94th Cong., 1st sess. (1975)	64
121 Cong. Rec. S16279-80 (September 19, 1975)	64
121 Cong. Rec. H9635-9 (October 6, 1975)	64
121 Cong. Rec. S17685 (October 7, 1975)	64

Interior Decisions:

37 L.D. 122	13, 51
40 L.D. 164	54
54 I.D. 559, 561, 562 (1934)	70

Restoration to Tribal Ownership of Ceded Colorado

<i>Ute Land</i> , 56 I.D. 330 (1938)	44
--	----

Boundaries of the Fort Berthold Indian Reservation in North Dakota, M-36802 (March 13, 1970) (unpublished)	71
--	----

Miscellaneous:

Blacks Law Dictionary (Rev. 4th ed.), p. 282	29
Cohen, Felix S., <i>Handbook of Federal Indian Law</i> , p. 157 (GPO 1945)	60
<i>Federal and State Indian Reservations, an EDA</i> <i>Handbook</i> , p. 339 (GPO 1971)	3
<i>Federal Indian Law</i> (GPO 1958)	67, 72
<i>A History of Indian Policy</i> , S. Lyman Tyler, (GPO 1973)	72
<i>Indian Population in United States and Alaska 1910</i> (GPO 1915)	54
McLaughlin, <i>My Friend the Indian</i> , p. 297 (Houghton Mifflin Company 1910) (L.C. E77M162)	7
National Cyclopaedia of American Biography, Vol. 43, p. 141 (1967 ed. University Microfilms, Ann Arbor)	6
Who Was Who in America, Vol. I, p. 437 (1966 ed. Marquis Pub. Chicago)	6

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE TRIBE

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-61) is reported at 521 F.2d 87. The opinion of the district court (Pet. App. 63-114) is reported at 375 F. Supp. 1065. The mandate of the court of appeals was stayed pending this Court's final disposition of the case. (App. 32.)

JURISDICTION

The judgment of the court of appeals (Pet. App. 61) was entered on July 16, 1975. The petition was filed on October 11, 1975. This Court granted the petition on May 24, 1976. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Where Congress by three statutes enacted in 1904, 1907 and 1910 (1) unilaterally, and without the consent of the Tribe, opened unallotted and unreserved tribal land on three-fourths of the Rosebud Indian Reservation for sale to settlers with the proceeds of the sales to be expended for the benefit of the Indians "only as received", and (2) at the same time affirmatively declared that the United States was not purchasing the land and was not guaranteeing to find purchasers, but was acting only as a trustee in the disposition of the lands:

Whether the three statutes terminated three-fourths of the Rosebud Indian Reservation, or whether that area continued to be "Indian country", defined as "all land within the limits of any Indian reservation * * *" in 18 U.S.C. 1151?

STATUTES INVOLVED

The statutes involved are the Acts of April 23, 1904, c. 1484, 33 Stat. 254; March 2, 1907, c. 2536, 34 Stat. 1230; May 30, 1910, c. 260, 36 Stat. 448, and June 25, 1948, c. 645, 62 Stat. 757, as amended (18 U.S.C. 1151), respectively. The full text of the statutes are set out at pages 1a-13a *infra*.

STATEMENT

In each of three statutes, adopted in 1904, 1907 and 1910, the United States, without the consent of the Tribe, unilaterally opened unallotted and unreserved tribal land on the Rosebud Indian reservation to settlement, with the proceeds of sales to settlers to be credited to the Tribe "only as received". In the last section of each statute, the United States affirmatively declared that it was not purchasing the land, and that it was not guaranteeing to find purchasers. (See pp. 41-42 *infra*.) Without reference to this language the court of appeals assumed the three statutes to be outright cessions to the United States, that extinguished the Indian title, placed the land in the public domain and terminated about three-fourths of the reservation. The Tribe's position is that the three statutes did no more than open the land to settlement; that the Tribe did not sell and the United States did not buy the land; that none of the land was made part of the public domain; and that the three statutes did not shrink the reservation bounds or affect the reservation status.

The Rosebud Sioux Tribe of South Dakota is an important Indian tribe with a current enrollment in excess of 9400 members and an on-reservation population of 7181 Indians.¹ The Rosebud Sioux are Indians of the Sioux Nation. The treaty relationship between the United States and the Sioux Nation dates from 1815.² In 1851, the United States by the famous Treaty of Fort Laramie recognized the Sioux Nation as the owner of a

¹*Federal and State Indian Reservations, an EDA Handbook*, p. 339 (GPO 1971)

²Treaties of July 19, 1815, 7 Stat. 125; June 22, 1825, 7 Stat. 250; July 5, 1825, 7 Stat. 252; July 16, 1825, 7 Stat. 257.

defined domain in what later became North Dakota, South Dakota, Nebraska, Montana and Wyoming.³ The Rosebud Reservation finds its origin in that part of the Fort Laramie Sioux country located west of the Missouri River in South Dakota that was "set apart for the absolute and undisturbed use and occupation" of the Sioux, as the Great Sioux Reservation, by Article 2 of the Treaty of April 29, 1868, 15 Stat. 635. Article 12 of the 1868 Treaty promised that no cession of any part of the reservation would be valid without the written consent of three-fourths of the male adults.⁴

In 1877, the United States, without the consent of the Sioux, took about 7.5 million acres embracing the Black Hills portion of the Great Sioux Reservation, and placed that acreage in the public domain. Act of February 28, 1877, 19 Stat. 254; *Sioux Tribe v. United States*, 205 Ct. Cl. 148, 155, 500 F.2d 458, 460 (1974); *Sioux Tribe v. United States*, 97 Ct. Cl. 613, 619-627, 655-656 (1942), certiorari denied 318 U.S. 789. Under an 1889 Act, with the written consent of the Sioux, Congress expressly "restored to the public domain" about one-half of the diminished Great Sioux Reservation (sec. 21) and, from the other half, carved out six reservations (secs. 1-6). One of the six was Rosebud, "set apart for a permanent reservation" (sec. 2). Act of March 2, 1889, c. 405, 25 Stat. 888. The Rosebud Reservation embraces what later were organized as three full counties (Todd,

³Treaty of Fort Laramie of September 17, 1851, 11 Stat. 749. *Sioux Tribe v. United States*, 205 Ct. Cl. 148, 155, 500 F.2d 458, 460 (1974).

⁴"ARTICLE 12. No treaty for the cession of any portion or part of the reservation, herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians, occupying or interested in same;***."

Mellette and Tripp), a major part of a fourth (Gregory) and a small corner of a fifth (Lyman—hereinafter treated as part of Gregory). (See Map, p. 17a, *infra*.)

The 1889 Act (secs. 8-11) authorized allotments on each of the six Sioux reservations with the consent of the majority of the male adult reservation Indians (sec. 9).⁵ Shortly after the Sioux were established on their separate reservations, the allotment process was initiated and went forward on a continuing basis. By 1901, 4508 allotments had been made on Rosebud alone. As of March 1903, 4699 allotments had been made on Rosebud. The population that year was reported at 4972. (App. 524, 530, CIA, 1901, p. 372; CIA, 1903, pp. 318, 522.)

Section 12 of the 1889 Act specified that after allotments have been made to all the Indians on any of the separate reservations, the Secretary was authorized to negotiate "***in conformity with the treaty or statute under which said reservation is held***, [for the purchase of] such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell,***." (For the full text of section 12, see p. 15a, *infra*.) This meant that any sale of tribal land would be invalid without the written consent of at least three-fourths of the male adults, as required by Article 12 of the 1868 Treaty. (See p. 4, fn. 4, *supra*.)

The Secretary took no action under section 12 of the 1889 Act looking towards the purchase of unallotted lands. After Gregory county was organized in 1898, an unsuccessful effort was made to obtain legislation direct-

⁵"Sec. 9.***: *Provided*, That these sections [8-11] as to the allotments shall not be compulsory without the consent of the majority of the adult members of the tribe, except that the allotments shall be made as provided for the orphans."

ing the Secretary to appoint a commission of three to negotiate with the Rosebud Sioux for the outright cession of all Indian land in Gregory County. H. Rept. 486, 56th Cong., 1st sess. p. 2 (1900), (App. 44). In the next session, the matter was handled by a provision in the Indian Appropriation Act, generally empowering the Secretary to use Indian inspectors to negotiate agreements with any Indians for the cession of unallotted land "subject to subsequent ratification by Congress." Act of March 3, 1901, c. 832, 31 Stat. 1058, 1077.

Over the next nine years, Congress enacted three statutes (1904, 1907 and 1910 Acts), each opening unallotted land in a county within the Rosebud Reservation (Gregory, Tripp and Mellette). Senator Gamble and Congressman Burke of South Dakota were the prime actors in initiating and moving the legislation. Throughout this period, the two legislators were members of the respective Committees on Indian Affairs.⁶ Another major figure was Inspector McLaughlin, the "Indians' friend", who initially had the trust of the Sioux. The Congressional delegation particularly requested his services and he was designated to deal with the Rosebud Indians as well as with the other South Dakota and North Dakota tribes.⁷

⁶*Who Was Who in America*, Vol. 1, p. 437 (1966 ed. Marquis Pub., Chicago); 35 Cong. Rec. 388; *National Cyclopaedia of American Biography*, Vol 43, p. 141 (1967 ed. University Microfilms, Ann Arbor); 35 Cong. Rec. 243.

⁷McLaughlin was employed in the Indian Service for 40 years (1871-1910). He negotiated 13 of the 21 surplus land acts, including all three with Rosebud (p. 14a, Items 1, 2, 4, 6, 8, 9, 10, 13, 15, 16, 18, 19, 21). McLaughlin spoke Sioux and was particularly valuable to the Government in negotiations with the Sioux because he had married into the Sioux tribe. See, Council

[Footnote continued]

In the Spring and Summer of 1901, Inspector McLaughlin met with Indian councils on the Rosebud Reservation and obtained the written consents of three-fourths of the male adults⁸ to an agreement for the outright cession of about 416,000 acres of the tribal land in Gregory county for the "fixed, definite, lump sum" of \$1,040,000, subject to ratification by Congress. (Sen. Doc. 31, 57th Cong., 1st sess., pp. 28-35 (1901), App. 381-392).⁹ The agreement was never ratified. (Pet. App. 16.)

A bill (S. 2992) to ratify the inspector's agreement passed the Senate on May 8, 1902 over stiff opposition arising from two provisions added to the simple ratification proceedings, December 15, 1906, (App. 000). McLaughlin, *My Friend the Indian*, p. 297, (Houghton Mifflin Company 1910) (L.C. E77M162). The South Dakota delegation in Congress specifically asked that Inspector McLaughlin be assigned to the Rosebud dealings. See S. Rept. 887, 60th Cong., 2d sess., p. 3 (1909), (App. 998-999).

⁸A total of 1031 signatures was obtained, 12 more than a three-fourths majority. The signatures were not obtained in open council. The council meeting, at which agreement was reached on September 11, 1901, was attended by only 60 Indians. Sen. Doc. 31, 57th Cong., 1st sess. p. 23, (1901), (App. 368). The agreement was submitted for signatures on September 14, and was transmitted to Washington three weeks later by letter of October 5, 1901. *Idem*, pp. 5, 28, (App. 319, 381-384). In the interval, apparently McLaughlin and the Agency superintendent toured the reservation and solicited signatures. See McLaughlin's acknowledgment of "the valuable assistance rendered me by Agent McChesney in obtaining the required number of signatures * * * after the agreement was reached; * * *." *Idem*, p. 7, (App. 325). Also H. Rept. 443, 58th Cong., 2d sess. p. 7 (1904), (App. 642-643).

⁹The agreement dated September 14, 1901 is set out in the preamble of the Act of April 23, 1904, c. 1484, 33 Stat. 254 (p. 1a, *infra*). Part of the agreement appears in the opinion below. (Pet. App. 15.) The signatures are listed in Sen. Doc. 31, *supra*, (App. 384-391). The Commissioner of Indian Affairs had instructed McLaughlin that the "consideration to be paid the Indians for the surplus lands in question should be a fixed, definite, lump sum." (Letter dated March 19, 1901, p. 4, App. 55.)

tion. One would have permitted homesteaders to acquire the land without charge and the other would have granted school sections 16 and 36 in each township, or lands in lieu thereof, to the State.¹⁰ The House Committee on Indian Affairs recommended simple ratification without the amendments on the ground that land purchased with appropriated public funds ought not be given away to homesteaders and on the further ground, that the grant of school lands was unnecessary because "under existing law sections 16 and 36 would be granted to the State upon the extinguishment of the Indian title."¹¹ The House took no action.

The next year (1902) new bills were reported out designed to overcome the opposition. The objectionable free homestead provision was eliminated. To avoid the expenditure of Federal funds, the bills were framed to carry out "a new policy in acquiring lands from the Indians [by] providing that the lands shall be disposed of to settlers, * * * and the money to be paid to the Indians only as it is received * * * from the settlers." (Pet. App. 19.) To make sure that the opposition was satisfied, the bills, as reported, affirmatively specified that nothing "in this act contained shall in any manner bind the United States to purchase any portion of the land herein described * * * [except the school lands] or to dispose of said land except * * * [by sale to settlers]; or to guarantee to find purchasers for said lands * * *."¹²

¹⁰S. Rept. 662, 57th Cong., 1st sess. pp. 1-2 (1902) (App. 274-275); Debates — 35 Cong. Rec. 3187-88, 4801-07, 5019 (1902), (App. 61-70, 76-112, 237-238). Pet. App. 16-19.

¹¹H. Rept. 2099, 57th Cong., 1st sess. p. 1 (1902), (App. 289-290).

¹²S. Rept. 3271, 57th Cong., 2d sess. pp. 1, 2, (1903) adopting H. Rept. 3839, 57th Cong., 2d sess. (1903), (App. 450-453). The same language appears in the last section of each of the three Rosebud Acts (pp. 6a, 9a, 13a, *infra*).

While the bills were before the committees, this Court on January 5, 1903, handed down its decision in *Lone Wolf v. Hitchcock*, 187 U.S. 553, holding that a statute that "purported to give an adequate consideration for the surplus lands" (p. 568) was within the Constitutional power of Congress, even though the tribe did not consent by the three-fourths majority required by an earlier treaty. Taking cognizance of *Lone Wolf*, the committee reports specified that "while it is probably true that it is not necessary to secure the consent of the Indians * * *, in view of the [1868] treaty stipulation [requiring a three-fourths majority] * * * it would be better to require the treaty as amended to be accepted by the Indians before it becomes effective." S. Rept. 3271 on S. 7390, *supra*, p. 2 (App. 453). Accordingly, the bills as reported out called for tribal consent.

Again McLaughlin was sent to Rosebud where he spent a good part of the summer of 1903 in an effort to obtain the signatures of three-fourths of the male adults to "a new agreement * * * along the lines proposed in Senate Bill No. 7390 * * *." (Pet. App. 20, n. 28.) Extended councils on six days in July and August 1903 produced only 90 signatures¹³ to an "agreement" dated August 10, 1903.¹⁴ A 16-day, 400-mile tour of the reservation soliciting signatures still left McLaughlin 296 short of the requisite 1033 required for the three-fourths majority,¹⁵

¹³Minutes of councils held at Rosebud, South Dakota, July 14, 29, and 30, August 7, 8, 10, 1903, (App. 467-522). The reference to the 90 signatures appears in the council minutes at page 50 and in McLaughlin's report of August 31, 1903, p. 4, (App. 521, 528).

¹⁴The "agreement" is set out in the preamble of the 1904 Act, p. 1a, *infra*.

¹⁵Report dated August 31, 1903, from McLaughlin to the Secretary of the Interior, App. 528. For the number constituting a three-fourths majority, see App. 528.

although he did procure 48 more than a simple majority. (Pet. App. 22.)

At the next session of Congress following McLaughlin's report (August 31, 1903), a fresh bill (H.R. 10418) was introduced for the avowed purpose of amending and ratifying the inspector's 1901 agreement. The bill was substantially the same as S. 7390 that McLaughlin had carried to the reservation except that it followed the format of the ultimate 1904 Act and did not call for the Indians' consent.¹⁶ The Secretary of the Interior joined with the Commissioner of Indian Affairs in recommending that, since the bill proposed "to open the surplus lands * * * without the consent of the Indians * * *", the bill should be amended "to insure the procurement to the Indians of an average price of at least \$2.50 per acre * * *" representing payment of the lump sum of \$1,040,000, the consideration agreed to by the three-fourths majority that adopted the 1901 agreement.¹⁷ The bill as reported out disregarded the committee report.¹⁸ During the debate, Congressman Burke, the sponsor of the bill, told the House that "forty-eight more than a majority [of the tribe] consented to accept the terms of that bill" but he did not mention that under the treaty a valid consent required a three-fourths majority and he did not mention that the bill before the House was substantively different from the instrument for

¹⁶37 Cong. Rec. 152, November 9, 1903. The bill is set out in 38 Cong. Rec. 1422 (January 30, 1904), (App. 544-552).

¹⁷Letter dated January 9, 1904, Commissioner of Indian Affairs to the Secretary and the Secretary's letter of the same date. H. Rept. No. 443, 58th Cong., 2d sess., pp. 6, 8, (1904), (App. 640-641, 645-647).

¹⁸H. Rept. No. 443, *supra*.

which McLaughlin had solicited signatures.¹⁹ That instrument called for consent.

On the Senate side, protests on behalf of the Indians were disregarded.²⁰ The House report was adopted *in toto*.²¹ There was no substantive debate.²² The bill became the Act of April 23, 1904, c. 1484, 33 Stat. 254 (p. 1a-6a), *infra*. In the next five days, five more bills became laws opening other Indian reservations, all with essentially the same provisions as the Rosebud 1904 Act. (See p. 14a *infra*, Items 3, 4, 5, 6.)

Before the Indians had received the benefit of any proceeds for land sold to settlers under the 1904 Act, bills were introduced to open the Tripp county portion of the reservation. (Pet. App. 34, n.55.) Again Inspector McLaughlin was assigned to negotiate. His instructions reminded him of the 1868 Treaty requirement of a three-fourths male adult majority and at the same time directed him to "explain to them with great particularity" that under *Lone Wolf v. Hitchcock*, Congress had "the right to open their lands without their consent: * * *."²³ Pending McLaughlin's efforts, the committees of Congress held the bills in abeyance. (Pet. App. 35.)

¹⁹38 Cong. Rec. 1423 (January 30, 1904), (App. 553-557).

²⁰Sen. Doc. 158, 58th Cong., 2d sess. (1904), (App. 711).

²¹The Senate committee adopted House Report No. 443 *supra*. S. Report. No. 561, 58th Cong., 2d sess. (1904) set out at 38 Cong. Rec. 4985-4988 (April 18, 1904), (App. 594-603).

²²38 Cong. Rec. 4988, (App. 625-626).

²³Letter dated December 5, 1906, Commissioner of Indian Affairs to McLaughlin, p. 10, (App. 941); Pet. App. 34-35. Burke bill, H.R. 20527, introduced December 3, 1906, 41 Cong. Rec. 15; Gamble bill, S.6618, introduced December 5, 1906, 41 Cong. Rec. 50-51.

McLaughlin held councils at Rosebud on seven days in December 1906 and January 1907, in the deep of winter when the weather promised a low attendance. The Indians were called on to agree to the bill (H.R. 20247) introduced by Congressman Burke. There were objections, proposals and counterproposals. Finally, McLaughlin prepared an instrument dated January 21, 1907, in the form of an act of Congress.²⁴ In open council McLaughlin obtained only 43 signatures (thumb prints). He then toured the reservation as he had done with his 1901 and 1903 "agreements" and solicited additional signatures. (See. p. 7, fn. 8, *supra*.) With all that, he still fell 321 signatures short of the requisite three-fourths majority, although he obtained 21 more than a simple majority.²⁵

The Secretary, by letter of February 14, 1907, recommended that the inspector's agreement be substituted for the pending bill. No mention was made of the lack of the requisite three-fourths majority consent.²⁶ The House Committee disregarded the Secretary's suggestion and reported out a second Burke bill (H.R. 24987) substantially in the form of the 1907 Act ultimately enacted.²⁷ During the debate,²⁸ Congressman Burke represented to the House that "The Indians, as I have

²⁴The instrument appears in H. Rept. 7613, 59th Cong., 2d sess. pp. 5-8, (App. 907-914).

²⁵Letter dated February 12, 1907 from McLaughlin to the Secretary of the Interior, pp. 3, 4 (App. 868A); H. Rept. 7613, 59th Cong. 2d sess. p. 7 showing 705 of 1368 qualified Indians signed. Pet. App. 35.

²⁶H. Rept. 7613, *supra*, p. 4, (App. 906).

²⁷H. Rept. 7613, 59th Cong., 2d sess. (1907), (App. 908-914). H.R. 24987 was introduced January 26, 1907, 41 Cong. Rec. 1782.

²⁸41 Cong. Rec. 3103-05, February 16, 1907, (App. 877-887).

stated before, have agreed to the disposition of it under the terms of the bill" by 42 more than a majority of the male adults, but again did not tell the House that this was far shy of the three-fourths male majority required by the 1868 Treaty. (Pet. App. 39 quoting from 41 Cong. Rec. 3104.) On the Senate side, Senator Gamble of South Dakota speedily moved the bill out of committee (S. Rept. 6838, 59th Cong., 2d sess. (1907), (App. 915-930)) and through the Senate with an amendment favorable to the Tribe but abandoned in conference. (Pet. App. 37.)

The 1907 Act lands were opened to settlers as of March 1, 1909. (37 L.D. 122.) Well before that date, Senator Gamble introduced a bill, substantively the same as the 1907 Act, to open the unallotted reservation land in Mellette county and a part of Todd county (S. 7379 introduced December 9, 1908; Pet. App. 45, n. 89). The Secretary of the Interior recommended that the bill be limited to Mellette county and suggested that even though under *Lone Wolf* the consent of the Indians was not necessary, "the views of the Indians should be procured before the bill is finally acted on, * * *." S.Rept. 887, 60th Cong., 2d sess. p. 3 (1909), (App. 998). The Senate Committee rejected the suggestion because "it would delay the consideration of the matter unduly if action were withheld for that purpose, [consultation with Indians]." (*Idem*, App. 996.)

Senator Gamble failed in his effort to bring S. 7379 before the Senate²⁹ during the second session of the 60th Congress. However, after Congress adjourned, Inspector McLaughlin again was ordered to Rosebud, not to obtain the consent of the Indians, but "to take up with the Indians of the Pine Ridge and Rosebud Reservations

²⁹Pet. App. 45, n. 91; 45 Cong. Rec. 1679, February 1, 1909.

the matter of opening parts of these reservations to settlement * * *."³⁰ McLaughlin held three councils at Rosebud in March and April 1909, (Pet. App. 45, ns. 92, 93). He told the Indians "I am not here to ask you to touch the pen or make any agreement at this time. This requirement has been discontinued since the Supreme Court [decision in *Lone Wolf*]." (App. 1032.) He acknowledged the Indians' opposition "to the opening of any more of your reservation." (App. 1020.) He repeatedly reminded the Indians that under *Lone Wolf* Congress had the power to open the lands without their consent. (App. 1021, 1030, 1032, 1033.) The Indians answered that if the United States could "take away our land [without our consent] why did you not stay at home." (App. 1034.) They opposed the opening of the reservation.

In the next session of Congress (January 1910), new bills were reported out and the Senate bill became the Act of May 30, 1910.³¹ Two other surplus land acts were adopted at about the same time. (See p. 14a, Items 19, 20, *infra*.)

With the adoption of the 1910 Act, all of the reservation, as established by the 1889 Act, had been opened except the Todd county area. In 1911 a bill was introduced to open Todd county. Again McLaughlin was

³⁰Letter dated April 2, 1909 from the First Assistant Secretary of the Interior to McLaughlin. (App. 1010.)

³¹Again, during the debates, the Senate was misled into believing that the Indians had consented. Senator Gamble of South Dakota erroneously stated (Pet. App. 49): "The Indians themselves agreed to the provisions of this bill after it had been submitted to them for their consideration." (Pet. App. 48-49, 45 Cong. Rec. 1074, January 27, 1910.) The fact is that except for a few "young men" who spoke up, the Indian spokesmen opposed the proposition that they give up their land "without consent." No vote was taken. No signatures were solicited.

sent to Rosebud. The bill was reported out and passed the Senate but it went no further.³² Otherwise, according to the decision below, there would be no Rosebud reservation.

To avoid continuing jurisdictional conflicts, the Tribe brought this suit charging that State authorities were interfering with tribal self-government by exercising jurisdiction over Indians on those portions of the reservation opened by the three Rosebud statutes. The Tribe asked for judgment that the three statutes did not disestablish any part of the Rosebud reservation as bounded by the 1889 Act. The district court entered judgment that the three statutes "did extinguish the reservation or 'Indian land' nature of the unallotted surplus lands in said counties by returning them to the public domain, and did diminish the geographical location of the boundaries of the Rosebud Sioux Reservation to coincide with the boundaries of Todd County, South Dakota [the only area not opened by a surplus land statute]." (Pet. App. 114.) The court of appeals affirmed. (Pet. App. 61.)

The court of appeals regarded the broad words of cession in the 1901 "agreement" "completely to extinguish every vestige of Indian title * * *". (Pet. App. 16.) The court ruled that the 1904 Act in fact ratified the 1901 agreement, amended "solely with respect to the method of payment". (Pet. App. 23.) On that basis the court construed the 1904 Act to be a "cession of the County of Gregory" with "the reservation *pro tanto* extinguished". (Pet. App. 26.) The court held that under

³²S. Rept. 1166, 62d Cong., 3d sess. (1913); 49 Cong. Rec. 3, 4210; App. 1302, 1303-1306.

the 1904 Act the land was "ceded, granted and conveyed" to the United States. (Pet. App. 28, n. 45.)

The court of appeals next turned to the 1907 and 1910 Acts. The court equated the 1907 Act with its concept of the 1904 Act saying "[T]he 1907 Act is, in substance, identical to the 1904 Act: * * *" (Pet. App. 38), with the same continuity of purpose (*idem*, 38-39) "and contains similar language of cession." (*idem*, 40). (The 1907 Act contains no language of cession.)

The court of appeals agreed that "the 1910 Act was not preceded by formal negotiations and agreement with the Rosebud Indians". (Pet. App. 44.) Even so, the court fitted the 1910 Act into the same cast it had provided for the 1904 and 1907 Acts. The court observed that "[T]he 1910 Act is substantially similar to the 1907 Act. Its operative language is identical: * * *." (*Idem*, p. 46.) The court stated (*idem*, p. 48):

"Again, we find nothing in the language of the 1910 Act or in the surrounding circumstances and legislative history which indicates a change in that congressional determination to alter the reservation boundaries *which we have found in the 1904 and 1907 Acts.*"³³

The court concluded that Congress "still considered the 1910 Act to effect a *cession* of Indian lands." (Pet. App. 55.)

SUMMARY OF ARGUMENT

1. The Rosebud Indian Reservation, as established and delimited by the Act of March 2, 1889, is an Indian reservation and therefore is "Indian country" as that

³³Emphasis supplied throughout this brief unless otherwise noted.

term is defined in 18 U.S.C. 1151. No part of the Rosebud Reservation was terminated by the 1904, 1907 and 1910 Acts opening the unallotted lands on three-fourths of the Reservation for sale to settlers with the proceeds from the sale to be credited to the Tribe "only as received".

2. Under the principles controlling the construction of Indian statutes, an Indian reservation, once established by Congress, will not be terminated unless the congressional intent is expressed on the face of the statute, or is clear from the surrounding circumstances and legislative history.

3. None of the three Rosebud statutes contains words of termination. All three were unilateral. The Tribe did not consent. There was no cession. There were no payments by the United States. The land was not made part of the public domain. Each of the three Rosebud statutes explicitly declares that the United States is not a purchaser, does not guarantee to find purchasers and is acting only as a trustee to sell the land and credit the proceeds, if any, to the Tribe, "only as received". Beneficial title never left the Tribe. Land that the United States did not sell to settlers continued to be the property of the Tribe.

4. The fundamental error below is that the court of appeals *assumed* that the three statutes ceded the unallotted land to the United States outright. That erroneous assumption was the predicate for the conclusion that Indian title was extinguished, the land returned to the public domain and the reservation terminated. That same erroneous assumption led the court of appeals to search for an indication that Congress did *not* intend the assumed cession to terminate the reservation, when the court should have searched for an expressed Congress-

sional intent to extinguish the reservation. If that unfounded assumption of cession is lifted from the opinion, the entire decision and its conclusion collapse. All else in the brief is commentary on the errors that are the by-product of the court's erroneous assumption.

5. The best and primary evidence of Congressional intent is the text of the acts themselves. The erroneous assumption of an outright cession to the United States is reflected in the court of appeals' treatment of the language of the three statutes. The court of appeals ignored all language in the statutes except that which the court considered supported its ultimate conclusion of termination and it misconstrued that language. Thus, (a) the court ignored the explicit, key language in each statute wherein the United States affirmatively disclaimed that it was purchasing the land, or guaranteeing to find purchasers. The court's assumption that the three statutes were outright cessions cannot be squared with this language; and the court did not square it or otherwise explain it; (b) the court ignored the language that vested the proceeds from the sale of the land in the "Indians belonging and having tribal rights on the Rosebud Reservation". Under the court's determination, Indians living on the opened portions of the reservation would be living on ceded land and would be off-reservation Indians, not entitled to share in the proceeds; (c) the court is silent as to the language of the three Acts reaffirming the Tribe's right to its full reservation and other treaty benefits not inconsistent with the Acts; and (d) the court ignored the language of the statutes reserving tribal land for Indian purposes and donating to new towns a portion of the tribal land in townsites and 20% of the Tribe's proceeds from the sale of townsite lots for public buildings, schools and parks. On the court's assumption

of an outright cession, there was no reason for this tribal donation.

6. The 1907 Act directed that before the Tripp county land was opened, the Secretary should grant new allotments of 160 acres to each eligible child and should permit any Indian within the Reservation to relinquish and select a lieu allotment anywhere within the Reservation, including Tripp county. The point is that terminating the Tripp county portion of the reservation cannot be reconciled with simultaneously permitting the selection of some 600 or 700 new allotments in Tripp county and permitting some 80 allottees of poor land to exchange for lieu allotments in Tripp county.

The court of appeals ignored the provision for 600 or 700 new allotments and confined itself to the 80 lieu allotments but did not reconcile them with its premise of an outright cession to the United States. Neither of those allotment provisions is compatible with the court's assumption of an outright cession that ~~could~~ ^{would} put these allotments out on the public domain off the reservation.

7. The 1910 Act authorized new allotments in the Mellette county portion of the reservation before it was opened and also afforded Indians with allotments "on the tract to be ceded" (Mellette county) the option of relinquishing and taking lieu allotments "on the diminished reservation". Again, the point is that terminating the Mellette county portion of the reservation with over 1000 Indians and 1949 allotments is inconsistent with authorizing new allotments in Mellette county.

Again, the court of appeals ignored the language authorizing new allotments and confined itself to the lieu allotment language. The court affirmed the district court's move or lose view, that a Mellette county allottee

could either move to the unopened portion of the reservation (Todd county) or lose the right to take a lieu allotment. The language is easily susceptible of the more harmonious construction that the word "diminished" as used in the 1910 Act included the opened Mellette county. No reason is advanced for Congress to authorize new allotments in Mellette county and at the same time forbid allottees established in the Mellette county portion of the reservation from selecting new allotments in that portion of the reservation. Under the court's assumption of an outright cession, some 1949 allotments in Mellette county, plus all the new allotments to eligible children, would be out on the public domain and off the reservation. Any of the 1949 allottees who wished to be on-reservation Indians would have to surrender their land and move to the unopened portion of the reservation (Todd county).

8. Lands embraced in Indian reservations are excluded from the school land grant in the South Dakota Enabling Act "until the reservation shall have been extinguished and the land returned to the public domain". Each of the three Rosebud Acts reserved the school sections from entry and granted those lands, or lands in lieu thereof, to the State. If the school land grant had been omitted from the Rosebud Acts, the State would not have received the land because the Rosebud Acts did not extinguish the reservation. The court of appeals concluded that the grant in the Rosebud Acts was "to implement the grant in the enabling act and for no other reason" on the premise that Congress understood "that the reservation would be extinguished". The court does not explain what it meant by "implement". On the court's erroneous assumption that the Rosebud statutes were outright cessions, there was no reason for the

explicit school land grant in each of the three Rosebud Acts. The grant in the Enabling Act would have attached. If the court of appeals sought to find extinguishment on the premise that Congress understood that the reservation would be extinguished, it erred again. That premise does not rest on the statutory language, but on erroneous expressions of law and fact by members of Congress, all contrary to the legal effect of the statutes themselves. Such erroneous recitations of members of Congress, or even committees of Congress, are not valid evidence of intent.

9. The 1910 Act extended the Federal laws prohibiting the introduction of liquor into Indian country, to the Mellette county portion of the reservation for a period of 25 years. This made the opened area "dry", regardless of whether the land was held in trust or in fee. Without the 25-year extension, only trust land would have been "Indian country" subject to the liquor laws. The court did not deal with the liquor provision to ascertain *whether* reservation status was terminated. Based on its erroneous assumption that the three Rosebud Acts were outright cessions, the court of appeals simply ruled that the liquor provision was nothing more than the exercise of a congressional power to control intoxicants on land ceded to the United States by an Indian tribe. The Tribe's position is that the liquor provision did not diminish but enlarged the Federal protection to the large number of Indians on the opened area, and that if there were doubt as to whether the liquor provision connoted termination, the rules governing the construction of Indian statutes dictate that the doubt be resolved in favor of retaining the reservation status.

10. By dredging subsequent legislation, references are found to "lands in the Rosebud reservation" or lands

"formerly within the Rosebud Indian Reservation", or like phrases. The court of appeals confined itself to phrases of the latter variety to bolster its erroneous assumption of an outright cession. Viewed as a whole, subsequent legislation, not in *pari materia*, whether pro or con, is not a reliable indicator of the Congressional intent expressed in the earlier Rosebud statutes, since in the subsequent statutes Congress was not focusing on the issue of termination.

11. Ever since the Rosebud Reservation was established, the entire Reservation as defined by the 1889 Act has been administered with Federal funds as an Indian reservation. This is confirmed by Interior's construction and practical administration of the landmark Indian Reorganization Act of 1934. That Act provided the authority for extending the period of trust of only those allotments located on an Indian reservation. All trust allotments on the Rosebud Reservation have been protected by the statutory extension of the period of trust. According to the court of appeals, upon enactment of the Rosebud statutes the land was ceded outright to the United States and became part of the public domain. This meant that the trust period on thousands of allotments in the opened areas has long ago expired, since, according to the court below, such allotments were not located on the reservation after the Rosebud statutes became law. This also meant that all Indians living in the opened portions of the reservation became off-reservation Indians no longer entitled to the Federal benefits provided for on-reservation Indians only.

12. The Indian Reorganization Act also authorized the Secretary to restore to the Tribe the remaining lands of any Indian reservation not disposed of under a statute opening the lands to sale. The Secretary listed land opened by the three Rosebud Acts, as well as by other

similar statutes, as coming within the provisions of the Indian Reorganization Act. Under the court of appeals' assumption that the Tribe ceded outright, such land was the property of the United States and part of the public domain and therefore the Secretary had no authority to restore the land to the tribes because it was not within any Indian reservation.

13. Other highlights of administrative recognition of the Rosebud Reservation as established by the 1889 Act are found in the 1935 approval of the Tribal Constitution defining the jurisdiction of the Tribe as extending to the area defined in the 1889 Act and the Field Solicitor's opinion that no part of the Rosebud Reservation had been terminated.

ARGUMENT

I.

ALL OF THE ROSEBUD INDIAN RESERVATION AS ESTABLISHED BY CONGRESS IS INDIAN COUNTRY.

As defined by Congress in 1948, "Indian country * * * means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent * * * Act of June 25, 1948, c. 645, 62 Stat. 757, as amended (18 U.S.C. 1151)³⁴ Congress established the

³⁴The pertinent text of Section 1151 reads as follows:

"* * * the term 'Indian country', as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian

[Footnote continued]

Rosebud Reservation in the 1889 Act and it continues to be a reservation as established, unless portions have been terminated by the 1904, 1907 and 1910 Acts. An Indian reservation will not be extinguished where there is doubt as to the intent of Congress. "This Court does not lightly conclude that an Indian reservation has been terminated. * * * The congressional intent must be *clear*, to overcome 'the general rule that [d]oubtful expressions are to be resolved in favor of the [Tribe]' * * *. Accordingly, the Court requires that the 'congressional determination to terminate * * * be expressed on the face of the Act or be *clear* from the surrounding circumstances and legislative history'." *DeCoteau v. District County Court*, 420 U.S. 425, 444 (1975).

Where a tribe voluntarily, by mutual agreement, cedes and sells to the United States for a sum certain all of its unallotted land on a reservation and Congress ratifies such an agreement, the intent is clear. Indian title and the reservation are extinguished. The ceded land becomes part of the public domain. *DeCoteau v. District County Court*, 420 U.S. 425 (1975).

The root error of the court below lies in its procrustean fit of this case into the *DeCoteau* mold. The court of appeals erroneously assumed each of the three Rosebud statutes to be an outright cession of the unallotted land to the United States. From this false assumption flowed the erroneous conclusions that Indian title was extinguished, the land was returned to the public domain and the three

communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

opened portions of the Reservation were terminated. Once the court below assumed an outright cession to the United States, the court could find no difference between this case and *DeCoteau* except "in the method of payment". (Pet. App. 23, 26, 31-33, 49.)

On the basis of the erroneous premise of an outright cession, the court below concluded that, even absent statutory language, Congress, by implication, breached its treaty obligations, terminated the affected portions of the reservation, placed the opened land ("ceded" in the court's dichotomy) in the public domain and off the reservation, took from thousands of Indians the rights, benefits, privileges and protection that the Federal law affords to on-reservation Indians, and placed in jeopardy the trust status of thousands of allotments whose period of trust had expired if they were not located on the Reservation. If the false assumption of an outright cession is lifted from the opinion, the entire decision and its ultimate conclusion collapse.

The gross error of an outright cession for a predicate led the court of appeals to err in its basic approach. The court reasoned that Congress must have terminated the reservation because the court could not find an affirmative, expressed intent not to terminate. Thus, the court could not find "any indication in substantial support of the claim * * * that the exterior boundaries * * * were to be left undisturbed despite the *cession* of the County of Gregory" (Pet. App. 26). The court could find no disclosed intention "to preserve intact the area of the original reservation and its boundaries." (Pet. App. 33.) The court projected this thesis to the 1907 and 1910 Acts. As to the 1907 Act, the court of appeals could find nothing to indicate "a change in that congressional determination to alter the reservation

boundaries which we have found in the 1904 Act" (Pet. App. 38). As to the 1910 Act, the court pyramided its deductions saying it could "find nothing in the language of the 1910 Act or in the surrounding circumstances and legislative history which indicates a change in that congressional determination to alter the reservation boundaries which we have found in the 1904 and 1907 Acts." (Pet. App. 48.)

The court's search should have been for an expressed affirmative intent to extinguish the reservation status in accordance with the principle that "when Congress has once established a reservation all tracts included within it remain a part of the reservation until separated therefrom by Congress." *United States v. Celestine*, 215 U.S. 278, 285 (1909). Instead of examining the statutes and their history to ascertain *whether* there was an outright cession, the court *assumed* a cession. This removed any reason for a meaningful examination of the statutory language and led the court, in effect, to charge that Congress, by implication and innuendo, abandoned its solemn treaty obligation to make the Rosebud Tribe secure in its Reservation and not to strip the Tribe of its treaty rights and privileges. *Northern Cheyenne Tribe v. Hollowbreast*, ____ U.S. ____, 48 L.ed.2d 274, 280 (1976); *Bryan v. Itasca County, Minnesota*, ____ U.S. ____, No. 75-5027, slip op. pp. 7-8, June 15, 1976.

The devastating consequences of the decision below—a decision the district court characterized as having "great political, social, cultural and economic effects" (Pet. App. 112),—ought not be inflicted on an Indian tribe unless there is no alternative. To destroy the reservation status is to destroy a way of life. To reach so extraordinary a result, the court of appeals bypassed the controlling language of the statute and departed from the principles

that govern the construction and interpretation of Indian statutes. The court abandoned the rule of construction that Indian statutes are to be liberally construed and that all doubts and ambiguities must be resolved in favor of the Indians. *Bryan v. Itasca County, Minnesota*, ____ U.S. ____, No. 75-5027, slip op. pp. 12, 18-19 and cases cited, June 15, 1976; *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 174-175 (1973); *Menominee Tribe v. United States*, 391 U.S. 404 (1968).

This "eminently sound and vital canon", *Northern Cheyenne Tribe v. Hollowbreast*, ____ U.S. ____, 48 L.ed. 2d 274, 280, n. 7(1976) is not a mere canon of statutory construction "easily invoked and as easily disregarded. It is an interpretive device, early framed by John Marshall's legal conscience for ensuring the discharge of the Nation's obligations to the conquered Indian tribes." *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655, 660 (C.A. 9, 1975), cited with approval in *Bryan v. Itasca County, Minnesota*, *supra*, p. 14. These canons have particular force where the destruction of a reservation is implied from a statute that contains no language of termination and no expressed intent to terminate the reservation. Such language and intent might be expected "if such a sweeping change in the status of tribal government and reservation Indians had been contemplated by Congress." *Bryan v. Itasca County, Minnesota*, *supra*, p. 7.³⁵

Those canons are tools to give life to this Court's decisions that the duties owed by the United States to

³⁵*Idem*, p. 19, where the Court stated: "This principle of statutory construction has particular force in the face of claims that the ambiguous statutes abolish by *implication* Indian tax immunities." The same principle applies to other immunities.

Indian tribes are to "be judged by the *most exacting* fiduciary standards." *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942). "These Indian tribes *are* the wards of the Nation." *United States v. Kagama*, 118 U.S. 375, 383 (1886). (Emphasis in original.) "*** the United States occupies the position and assumes the responsibilities of virtual guardianship, bound by every moral and equitable consideration to discharge its trust with good faith and fairness." *United States v. Payne*, 264 U.S. 446, 448 (1924). "*The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence, formulating the rights and obligations of private persons, equally subject to the same laws.*" *Choctaw Nation v. United States*, 119 U.S. 1, 28 (1886).

These broad and humane principles appeal to the highest standards of honor and morality fitting the situation where the guardian deals with the land of its unprotected, uninformed and dependent ward. They take on double significance, where, as here, the United States represents conflicting interests—the fiduciary relationship with the voteless Indian whose land it held in trust, versus the nonIndian citizens who demanded that the reservation lands be opened.

Here, there was no call to go beyond the purpose expressed on the face of each of the three statutes—to open the land to settlers. Nothing more. There were no words of termination. The court below had no reason or basis for assuming a cession where the language of the statutes precluded a cession.

The correct facts and the correct law are that none of the three Rosebud statutes contains words of termination. All three are unilateral actions. The Tribe did not consent to any of them. The Tribe did not cede or sell any land. The United States did not buy any land. None of the land was returned to public domain. The court below assumed or implied all of these and other factors to reach its conclusion of termination. In fact, the three statutes did no more than open the unallotted land at the prices fixed in the statutes, with the Tribe to receive nothing, unless the land was entered and the entrymen made payment. Beneficial title to each tract remained in the Tribe until each entryman made full payment and did all else required of him to earn a patent.

II

THERE WAS NO CESSION, TRIBAL TITLE WAS NOT EXTINGUISHED, AND NONE OF THE LAND WAS "RESTORED" OR OTHERWISE MADE PART OF THE PUBLIC DOMAIN.

A. **There was no cession.** A cession is a sale, a conveyance, a bilateral transfer of property. To cede means "To yield up; to assign; to grant. Generally used to designate the transfer of territory from one government to another." *Blacks Law Dictionary*, (Rev. 4th ed.), p. 282. There can be no "yielding up", no "assignment", no "grant", no "cession", without action by the landowner. A cession is a voluntary act, a voluntary conveyance. *Cook v State*, ____ S.D. ____, 215 N.W.2d 832, 836 (1974). Rosebud never yielded, assigned, granted, ceded, sold, or conveyed, an acre of reservation land to the United States under any of the three acts.

All three Rosebud statutes were unilateral acts of Congress. A unilateral act of Congress cannot be a

"cession". There is no mutual agreement as in *DeCoteau, supra*. None of the three Rosebud statutes could or did vest the United States with ownership of a single acre of land except for the school sections, and those the Government acquired by eminent domain.³⁶

³⁶As to the school lands for which the United States paid an arbitrary \$2.50 per acre, the United States is liable for taking under the Fifth Amendment and must pay just compensation represented by the value of the land as of the date of taking, i.e., the date title passed to the State (date of approval of survey) (*United States v. Wyoming*, 331 U.S. 440 (1947)), plus interest at 5% from the date of taking until payment is made. *Confederated Salish & Koontenai Tribes v. United States*, 193 Ct. Cl. 801, 813, 826, 437 F.2d 458, 464, 472 (1971) (involving the 1904 surplus land act affecting the Flathead Reservation approved the same day as the Rosebud 1904 Act (p. 14a *infra*, Item 3)); *Three Tribes of Fort Berthold Reservation v. United States*, 182 Ct. Cl. 543, 558, 390 F.2d 686, 694 (1968), (involving the 1910 Act at Fort Berthold substantively identical with and approved two days after the 1910 Rosebud Act (p. 14a, Item, 20, *infra*)).

And where the tribe did not consent to the sale of its land under a surplus land act, and Rosebud did not consent, the United States became liable for a taking under the Fifth Amendment as of the date the patent to each 160-acre tract was issued to the settler or other purchaser. *Confederated Salish & Koontenai Tribes v. United States, supra*, pp. 819-820, 437 F.2d 468 (1971); *Lower Sioux Indian Community in Minnesota v. United States*, 30 Ind. Cl. Comm. 463, 474 (1973), affirmed ___ Ct. Cl. ___, 519 F.2d 1378 (1975), involving the 1904 surplus land act at Devils Lake (p. 14a, Item 4, *infra*).

If the court below is right, the Tribe ceded and title was extinguished and passed to the United States on the dates of the three surplus land acts. If that had happened, there could be no Fifth Amendment taking. But that is not what happened. Beneficial title to each tract entered remained in the Tribe until the entryman satisfied the requisites of the surplus land act, paid the purchase price and received his patent. The patent, not the statute, divested the tribe of its title. Up to the date of the patent, the United States could have withdrawn the land from sale. *Creek Nation v. United States*, 302 U.S. 620, 622 (1938). And it did withdraw the undisposed of lands in 1934. See p. 70, *infra*.

The United States could not have purchased the land. Title could not have vested in the United States. The affirmative declaration of the last section of each of the three statutes precluded a purchase or sale (see pp. 41-42, *infra*).

The court of appeals somehow conceived that a mutual agreement to sell and buy could be accomplished without tribal consent (Pet. App. 24-25). Referring to *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903), the court of appeals stated (Pet. App. 25):

The effects of this decision, we note, were explained to the Indians by Inspector McLaughlin in 1903, 1906, and 1909. Consequently, it was clear that the vote of three-fourths of the adult male Indian population was no longer required as consent to cession of any portion of the Rosebud Reservation.

Lone Wolf holds that the Constitution empowers Congress, without the consent of the Indians, to direct that tribal land be allotted and the remainder opened for sale to settlers with the proceeds credited to the tribe. *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). But the exercise of the Constitutional power is not a substitute for a mutual agreement between a tribe and the United States. Nor does the exercise of the Constitutional power alter the definition of tribal consent fixed by treaty so as to reduce the necessary majority from three-fourths of the male adults to a simple majority.

Lone Wolf means that no Rosebud consent was necessary for the enactment of a statute opening the land. But, *Lone Wolf* does not mean that consent to sell tribal land can be manufactured by legislative fiat. Nor can tribal consent be gained by any less than the three-fourths majority required by the 1868 treaty unless

Congress so specifies. Here it did not. The complete absence of a cession removes the underpinning from the determination below. Everything that follows in this brief is simply commentary on the many facets of the errors that flow from the court's false assumption of a cession.

B. There was no payment. The erroneous assumption that the Tribe had sold the land to the United States led the court below to the conclusion that "method of payment" was the only difference between the outright sale for a sum certain in *DeCoteau*, and the opening of the land for sale to settlers under the Rosebud acts. (Pet. App. 23, 26, 31-33, 49.)

The fallacy is patent. The word "payment" in the sense it is used by the court of appeals must mean the purchase price or consideration agreed upon by the buyer and seller. Thus, in the bilateral contract in *DeCoteau*, "payment" was the purchase price contracted by the parties. This Court pointed out that when Congress ratified the 1891 agreement with the Sisseton and Wahpeton, the United States was vested with ownership of the land and the Sisseton and Wahpeton were vested with the right to the agreed consideration of \$2.50 per acre. *DeCoteau v. District County Court*, 420 U.S. 425, 448 (1975). In this case the Tribe could not be vested with a right to consideration. There was none.

In this case, there could not be a contract or consideration. Unlike *DeCoteau*, in the last section of each Rosebud statute, the United States disclaimed any intent to purchase or to pay. The court below had no basis for comparing the Rosebud statutes with the "payment" in *DeCoteau*. Here the United States paid nothing. If none of the land had been purchased by settlers, the land would have continued to be the property of the Tribe and there would have been no

proceeds. The Tribe, waiting for "payment", would be difficult to convince that \$2.50 per acre in hand is the same as \$2.50 per acre that might never come into being. This is not a difference in "method". This is a difference between a cession for a sum certain and no cession.

C. The land did not become part of the public domain. The court below held that the reservation area was terminated and the land was "returned to the public domain".³⁷ "'Public domain' is equivalent to 'public lands', and these words have acquired a settled meaning in the legislation of this country. 'The words "public lands" are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws.'" *Barker v. Harvey*, 181 U.S. 481, 490 (1901); *Borax Consolidated v. City of Los Angeles*, 296 U.S. 10, 17 (1935); *Minnesota v. Hitchcock*, 185 U.S. 373, 391-394 (1902). The Rosebud lands never were subject to sale or disposal under the "general laws".

Public lands of the United States are owned by the United States. Tribal lands are not public lands. *Missouri, K.&T.R. Co. v. United States*, 235 U.S. 37 (1914); *Leavenworth, etc., R.R. Co. v. United States*, 92 U.S. 733, 741 (1876); *Bennett County, South Dakota v. United States*, 394 F.2d 8, 11 (C.A. 8, 1968) and cases cited. Before tribal land can become public lands of the United States, the Indian title must be extinguished. This can be done by the sword, or by voluntary cession as in the case of the Sisseton and Wahpeton in *DeCoteau*, or by the exercise of eminent domain as in the case of the

³⁷The land never had been a part of the public domain and therefore could not be "returned" to the public domain. The reservation was a part of the aboriginal Sioux country. (See p. 3-5, *supra*.)

school sections (see p. 30, fn. 36, *supra*). But it cannot be done by opening the land to settlers with the proceeds to be credited to the Indians. Such land never becomes public land.

Whether the tribe does consent to the opening of its lands, as in the case of the Chippewas in *Minnesota v. Hitchcock*, 185 U.S. 373 (1902), or does not consent, as in the case of Rosebud, makes no difference. Nor does it make any difference whether words of cession are used, or how broad those words are.³⁸ If there is both consent to opening lands and words of cession, the cession is not absolute, but in trust for a purpose. The purpose is that the United States will endeavor to sell the lands and credit the tribe with the proceeds only as received. Beneficial title remains in the tribe until the settler pays his money and earns his patent. *Ash Sheep Co. v. United States*, 252 U.S. 159, 166 (1920); *United States v. Mille Lac Band*, 229 U.S. 498 (1913); *Minnesota v. Hitchcock*, 185 U.S. 373, 394-395 (1902); *United States v. Brindle*, 110 U.S. 688 (1884) at page 693, ("* * * the Indians continued, until sales were made, the beneficial owners of all their country ceded in trust."). (Also see p. 30, fn. 36, *supra*.)

³⁸For example, the statute in *Minnesota v. Hitchcock*, *supra*, and *United States v. Mille Lac Band*, *supra*, provided that upon acceptance by the Chippewas, the act would constitute a "complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians * * *" and specified that "acceptance and approval of such cession and relinquishment * * * shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided." Act of January 14, 1889, c. 24, sec. 1, 25 Stat. 642. The treaty in *United States v. Brindle*, *supra*, did "cede, relinquish and quitclaim * * * all their right, title and interest * * *." The surplus land act in *Ash Sheep v. United States*, *supra*, to which the Crow consented, did "cede, grant, and relinquish to the United States all right, title, and interest."

To be sure, the preamble of the 1904 Act sets out the unratified 1901 agreement that contains the words "cede, surrender, grant and convey" (p. 1a, *infra*; Pet. App. 16). But the operating language of the 1904 Act, following the enactment clause, eliminated the agreement to sell and buy for \$1,040,000 and substituted opening the lands to settlers with the proceeds credited to the Tribe. To the court of appeals this constituted a ratification of the 1901 agreement, amended "solely with respect to the method of payment". (Pet. App. 23.) This amounts to saying that wiping out an obligation of the United States to pay \$1,040,000 and substituting a promise to try and sell the land in small tracts and pay the proceeds "only as received", displays only a difference in "method". This view was possible only because the court below closed its eyes to the last section of the 1904 Act where the United States spelled out that it was not buying or paying for the land.

Concededly, when an absolute cession extinguishes Indian title, as in *DeCoteau* "Indian lands ceased, without any further act of Congress, to be Indian country". *Dick v. United States*, 208 U.S. 340, 358 (1908). The land then became part of the public domain and was opened "to entry and settlement under the homestead and townsite laws". See Act of March 3, 1891, c. 543, sec. 30, 26 Stat. 989, construed in *DeCoteau*, *supra*. But, as noted (pp. 29-32, *supra*), not one acre of land opened by the three Rosebud statutes was the subject of a cession. None ever became part of the public domain. None was opened to free homesteads, or to homesteads for the public land price of \$1.25 per acre. A settler could acquire Rosebud land only by satisfying the requirements of the Rosebud statutes including payment for the land at the prices fixed in those statutes. And the Rosebud prices

were higher and had no relation to prices, under the public land laws.³⁹

D. Selected phraseology does not support the court's conclusion that reservation status was terminated. To bolster its assumption that the three acts were cessions that extinguished Indian title and returned the land to the public domain, the court below relied on the "language of diminution and extinguishment, [that] was used interchangeably with respect both to the proposed ratification of the 1901 Agreement and the passage of the 1904 Act" (Pet. App. 25-26); on excerpts from 1902 debates, the committee reports on the bill that became the 1904 Act (*idem*, p. 26, n. 43); and on phrases extracted from three council meetings held in 1901 and one held in 1903 (*idem*, p. 26).

1. The words of cession lifted from the 1901 agreement and repeated in the 1904 Act have no legal effect. The Government cannot create a cession any more than a stranger can deliver title to another's land by signing a warranty deed. Here there was no consent. There can be no cession, (pp. 29-32, *supra*). Even if there were consent the cession would not be absolute but in trust for the purpose of the trust, (p. 34, *supra*).

2. The language in the 1902 debates and the 1904 Act committee reports does not support termination. The

³⁹For example, Section 2 of the 1904 Act fixed prices ranging from \$2.50 to \$4 per acre, Section 3 of the 1907 Act from \$2.50 to \$6 per acre, and Section 4 of the 1910 Act at the appraised value. (See pp. 5a, 7a, 11a, *infra*.) If the entryman failed to make the annual payments promptly when due, "all rights in and to the land covered by his entry" ceased, the payments were forfeited and the entry canceled. The entryman was not entitled to a patent until all requirements had been satisfied including payment. 1904 Act—Sec. 2; 1907 Act—Sec. 3; 1910 Act—Sec. 6; pp. 5a, 8a, 12a, *infra*.

April 1902 Senate debate of a bill to ratify the 1901 agreement to cede the Gregory county land outright for a sum certain centered on the free homestead issue. Senator Clapp of Connecticut, not a manager or sponsor of the bill, quite collaterally observed that "because we have to pay the Indians * * * for the purpose of * * * *extinguishing the reservation* * * * it does not follow that the land is * * * worth so much an acre [to settlers]." (35 Cong. Rec. 4807, April 29, 1902, quoted at Pet. App. 19.) The court below apparently relied on the underscored words. The complete answer is that if the ratification bill under debate had become law, that portion of the reservation would have been extinguished. But the bill did not become law. The 1901 agreement was not ratified. There is no warrant for borrowing from the debate of the rejected ratification bill to read extinguishment into the unilateral 1904 Act.

The committee reports on the bill that became the 1904 Act recited that "the land that is proposed to be ceded by this bill * * * is really only a corner of the reservation, which will be left compact and in a square tract * * *,"⁴⁰ The court of appeals relied on the underscored phrase. The same committee reports represented the bill as one "to ratify and amend [McLaughlin's 1901] agreement * * * providing for the cession to the United States of the unallotted [Gregory county lands] * * *."⁴¹ In the debate on that bill, the House was informed that "forty-eight more than a majority consented to accept the terms of that bill [referring to a like bill in the prior session]. This bill is substantially the

⁴⁰H. Rept. No. 443, 58th Cong., 2d sess., p. 3, (1904) referred to in Pet. App. 26, n. 43 and quoted in Pet. App. 33-34.

⁴¹H. Rept. No. 443, *supra*, p. 1.

same * * *."⁴² The underscored language on which the court relies must be read in the context of the impression given to Congress that the bill was one to ratify an outright cession agreed to by the Indians. In fact, it was not a cession and the Indians did not agree by the requisite three-fourths majority. (See pp. 9, 10, *supra*.) The law itself controls, not the erroneous statements in the legislative history.

3. **McLaughlin's phrases do not support termination.** The court of appeals placed great stock on eight phrases extracted from the transcripts of three meetings Inspector McLaughlin held with the Indians in 1901 and one meeting in 1903.⁴³ The court determined that the language of these phrases "admit of no other conclusion" but that "actual diminution [of the reservation] was involved" in the negotiations. (Pet. App. 26.)

⁴²App. 553-554, 38 Cong. Rec. 1423, January 30, 1904.

⁴³1. "negotiating with you people for this corner of the reservation" (Pet. App. 13, n. 17, April 13, 1901).

2. "relinquish their allotments and remove to the reservation" (Pet. App. 13, n. 17, April 13, 1901).

3. "the diminished reservation" (Pet. App. 13, n. 17, April 13, 1901; *idem*, 14, n. 19).

4. "leave you a nice, square reservation" (Pet. App. 13, n. 17, April 13, 1901).

5. "removing to the diminished reservation" (Pet. App. 14, n. 18, April 15, 1901).

6. "disposing of this little corner of the reservation" (Pet. App. 13, n. 17, April 13, 1901).

7. "leave your reservation a compact, and almost square tract * * * about the size and area of the Pine Ridge reservation" (Pet. App. 12, n. 16, September 5, 1901).

8. "you will still have as large a reservation as Pine Ridge after this is cut off" (Pet. App. 22, n. 32, July 30, 1903).

All eight phrases originated with Inspector McLaughlin, not the Indians. All but the eighth phrase were uttered in 1901 when McLaughlin was engaged in negotiating an outright cession, culminating in the unratified 1901 agreement to sell for \$1,040,000. In that context, all phrases were correct. Indian title was to be extinguished. On the assumption that the 1904 Act was a cession, the court below used those phrases as expressing the Congressional intent to terminate. The assumption was wrong. The phrases were relevant to the 1901 agreement, but not to the 1904 Act and certainly not to the 1907 and 1910 Acts.

The eighth phrase was expressed at the council held July 30, 1903 when McLaughlin sought consent to a bill opening the lands and crediting the proceeds as received. This was the meeting where McLaughlin explained the "new departure" to mean that the Indians would not "receive a lump sum consideration for the land ceded but only what the Government is able to realize from the sale of the lands." (Quoted in Pet. App. 21-22.) McLaughlin could not say how much, or when, payments would be received from the settlers.⁴⁴ The Indians strongly resisted and McLaughlin answered (App. 490): "* * * You have said that you want to call this deal off. You are not using good judgment in coming to that decision. Congress wants the land opened; * * * and now it is for you to make the best bargain you can for the land. It is of no use to you now, you are deriving no revenue from it now.

⁴⁴McLaughlin (App. 489-490, July 30, 1903): "*I fear that this matter is not fully understood by you. * * * I am here to enter into an agreement which is similar to that of two years ago, except as to the manner of payment; which manner of payment makes it impossible to state definitely what amount can be paid to you each year.*"

You will still have as large a reservation as Pine Ridge after this is cut off. White men going into that country will build houses and make improvements and the value of your land will be enhanced."

McLaughlin's 1901 words were correct. They were stated in the context of negotiations for the extinguishment of Indian title. McLaughlin's 1903 words may be construed to mean that, even after the land was opened, the unopened portion of the reservation would be as large as Pine Ridge. Nothing indicates that either McLaughlin or the Indians were focusing on shrinking the boundaries of the reservation. But, assuming, as did the court below, that McLaughlin meant that by consent to the bill opening the lands, the reservation would be reduced in geographical size, McLaughlin was wrong and his erroneous statements cannot convert the statutes into cessions.

III.

THE EXPRESS LANGUAGE OF THE THREE ROSEBUD ACTS AFFIRMATIVELY COMPELS REJECTION OF THE THESIS OF TERMINATION OF RESERVATION STATUS.

The substance of all three statutes is the same, as is much of the language. All three, without the consent of the Indians, unilaterally directed that the lands be opened to entry, the United States acting as trustee to sell the land and expend the proceeds for the benefit of the Indians "only as received". In the last section of each of the three statutes, the United States disclaimed any intention of purchasing the land or of finding purchasers, or of assuming any obligation except to act as trustee to dispose of the lands. All three reserve certain benefits and lands for the Indians.

The 1904 Act differs in format from the 1907 and 1910 Acts but not in substance. The preamble of the 1904 Act sets out the six articles of the unratified 1901 agreement followed by the operating language of the statute. The operating language purports to ratify the agreement as unilaterally amended to eliminate Article VI of the 1901 "agreement" calling for consent by a three-fourths majority, and Article II calling for payment of the \$1,040,000. As a result of these and other substantive changes (Pet. App. 147-149), the 1904 Act, in legal effect, as well as language, is the same as the 1907 and 1910 Acts. In all three statutes, the land was opened for sale to settlers with the proceeds credited to the Indians only as received. Nothing more.

Nothing in the language of the three statutes provides the "clear" intent necessary to terminate the reservation. Nothing supports termination by implication. However, once the court of appeals assumed that the Tribes had ceded the land through the statutes, the court disregarded all language of the statutes inconsistent with the thesis of termination.

A. The express language of the last section of each of the three statutes establishes that the United States did not purchase and the Tribe did not sell any land. This has been discussed. Ratification of the 1904 outright cession negotiated by McLaughlin failed because of the opposition to using public money to pay the Tribe and then donating the land to homesteaders under the public land laws (pp. 7-8, *supra*). Doubtless, to assure the opposition that the land would be opened without cost to the United States, the last section of each of the three Rosebud statutes affirmatively spelled out that except for the school lands, the statutes did not bind the United States "to purchase any portion of the

land * * * or to guarantee to find purchasers" and that the United States was simply acting "as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received * * *." (See pp. 6a, 9a, 13a, *infra*.) Significantly, the court below is silent on this key language that cannot be reconciled with the notion that the Tribe sold and the United States bought.

B. The express language requiring that the proceeds of sales be credited to the Tribe in the Treasury confirms that neither Indian title nor the reservation was extinguished. Section 5 of the 1907 and Section 7 of the 1910 Acts directed that the proceeds of sale "be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the Rosebud Reservation * * *." Section 3 of the 1904 Act used equivalent language. (See pp. 6a, 8a, 12a *infra*.) If the court below is right and each statute terminated a portion of the reservation, the Indians in the disestablished portion would not share in the benefits of those moneys since they would no longer be "Indians belonging and having tribal rights on the Rosebud Reservation".

The district court thought that Congress intended to leave the Indians in the opened areas outside the reservation, stating: "Clearly, there is no other reasonable explanation for such a provision." (Pet. App. 106.) The conclusion of the court of appeals reaches the same result. Thus to the courts below upon enactment of the statutes, the estimated 500 Indians with at least 452 allotments in the Gregory county portion of the reservation (1904 Act), and the 500 Indians with over 2100 allotments in the Tripp county portion of the reservation (1907 Act), and the many more than 1000 Indians and 1949 allotments in the Mellette county portion of the res-

ervation (1910 Act), were no longer "Indians belonging and having tribal rights on the Rosebud Reservation."⁴⁵ According to the courts below, those Indians lived on the terminated areas and no longer were reservation Indians eligible for the benefits then available only to reservation Indians.⁴⁶

The court of appeals is silent on the language that the proceeds belonged to the Tribe, not the United States, yet this feature is the basis of this Court's holdings that, in equity, even where the Indians consent to an explicit cession expressed in the broadest terms of conveyance for the purpose of disposing of their lands to settlers, "the Indians continued, until sales were made, the beneficial

⁴⁵Precise county statistics are not available since the reservation was not managed according to county lines but divided into seven administrative districts. Some of the districts extended into two counties. (See Map, p. 17a, *infra*.) Based on a 1913 report to the Commissioner of Indian Affairs, (App. 1320-1323) information is available as to district populations and the number of allotments as of that date.

Tripp county contained the Big White River district (1700 allotments) (App. 1321) and a part of Ponca Creek district (905 allotments (App. 1321). The remainder of Ponca Creek district was in Gregory county with 452 allotments, S. Rept. 662, 57th Cong., 1st sess., page 4 (1902), (App. 283).

Mellette county contained two full districts and the better part of a third. As of 1913, the two full districts (Black Pipe and Little White River) were reported to have 1000 Indians and 1949 allotments. The third and largest district (Bull Creek) was reported to have 800 Indians and 1889 allotments. (App. 1322.) Also see Map, p. 17a, *infra*.) None of the 1889 allotments is included in the figure used in the text.

⁴⁶Prior to *Morton v. Ruiz*, 415 U.S. 199, 209-210 (1973), the Bureau of Indian Affairs administered the Federal statutes to grant Federal benefits (medical, hospital, funeral, credit, education, welfare, etc.) only to those Indians living on the reservation, -not even "on or near" the reservation.

owners of all their country ceded in trust. Of this we have no doubt." *United States v. Brindle*, 110 U.S. 688, 693 (1884). Also, *Ash Sheep Co. v. United States*, 252 U.S. 159, 166 (1920); *United States v. Mille Lac Band* 229 U.S. 498, 509 (1913); *Minnesota v. Hitchcock*, 185 U.S. 373, 394-395 (1902); *Restoration to Tribal Ownership of Ceded Colorado Ute Land*, 56 I.D. 330, 337-338 (1938).

The holding below reaches the absurd result that the Indians, for whose benefit the proceeds of sales were to be expended, would be ineligible to enjoy those proceeds because they would be off-reservation Indians.

C. The language of the three Acts reaffirming treaty benefits denies an intent to extinguish the reservation. The last proviso of the 1907 and 1910 Acts and Section 1, Article V of the 1904 Act each specifies "That nothing in this act shall be construed to deprive the said Indians of the Rosebud Reservation, in South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act."

One of the treaty benefits was the right to a defined reservation fixed in Article 2 of the Treaty of April 29, 1868, *supra*, establishing the Great Sioux Reservation, "for the absolute and undisturbed use and occupation of the Indians * * *." The opening sentence of Section 16 of the 1889 Act reguaranteed to the Sioux "at each of said separate reservations * * * all the title and interest of every name and nature secured" by the Treaty of 1868.⁴⁷ Section 19 of the 1889 Act similarly extended

⁴⁷Section 16, in pertinent part, reads:

"That the acceptance of this act * * * shall be held to confirm in the Indians * * * at each of said

[Footnote continued]

to the Rosebud Indians all of the provisions of the 1868 Treaty, not in conflict with the 1889 Act and that included the promise of "absolute and undisturbed use and occupation" of the reservation. Section 12 of the 1889 Act specified that none of the unallotted land in each of the separate reservations would be sold except with the consent of the tribe of that reservation. (See p. 5, *supra*.) The court below gave no weight to the benefit provisions securing the reservation and construed the three Rosebud acts to abrogate the treaty right to a reservation.⁴⁸

To be sure, the treaty right to a reservation would be inconsistent with an outright cession by a tribe, or with a statute that expressly terminated the reservation status. But, only by *assuming* that the Rosebud Acts did cede and did terminate, can it be said that the benefit provision is inconsistent with those Acts.

The treaty benefit language precludes the notion that Congress, at one and the same time, renewed treaty promises to maintain the reservation, and altered the reservation boundaries so as to strip the reservation Indians of their Federal and tribal rights. To terminate the reservation status is to read the benefit provisions out

separate reservations, respectively, to their separate and exclusive use and benefit, all the title and interest of every name and nature secured therein to the different bands of the Sioux Nation by said treaty of [1868] * * *."

⁴⁸Prior to this Court's decision in *DeCoteau*, the court of appeals ruled that the identical treaty benefit language resecured the right to a reservation preserved by an 1886 agreement that corresponds to the Sioux 1868 Treaty and 1889 Act. *City of New Town, North Dakota v. United States*, 454 F.2d 121, 125 (C.A. 8, 1972).

of the three statutes. A construction that reaches that result signals error.

D. The language of the three Acts reserving tribal land for Indian purposes affirmatively supports an intent to continue the reservation status. The 1904 Act (sec. 2) and the 1910 Act (sec. 1) authorized the reservation of tribal land for agency, Indian school and religious purposes. The 1910 Act (secs. 1, 4) also reserved to the Tribe land classified as timberland. These statutory provisions are consistent with leaving the reservation status untouched. On the other hand, if, as held below, there was an outright cession and the reservation status of the ceded land was being wiped out, why continue tribal ownership of timberland and land for agencies, for Indian schools and for missions? Why leave the Tribe with vested interests? That was not done in the outright Sisseton and Wahpeton cession in *DeCoteau*. The Sisseton and Wahpeton Act simply gave outside organizations, not the Tribe, a preferential right to purchase land they occupied for religious and educational purposes. Act of March 3, 1891, c. 543, sec. 26, Art. II, sec. 28, 26 Stat. 1038. The court below ignored the language in the Rosebud statutes reserving lands to the Tribe.

E. The townsite provisions affirmatively support an intent to continue the reservation status. The 1904 Act makes no special provision for townsites, probably because it originated as an outright cession. However, both the 1907 and 1910 Acts do make special provision for townsites. The point is that if the lands in fact had been public, there would have been no occasion for special provisions. The public land laws provide for townsites. Act of March 3, 1863, c. 80, sec. 1, 12 Stat. 754, 43 U.S.C. 711-727.

Section 4 of the 1907 Act authorized the Secretary of the Interior to reserve land for townsite purposes with the net proceeds from the sale of townsite lots to be credited to the Tribe. Section 3 of the 1910 Act authorized the Secretary to reserve land for townsite purposes, to set apart and patent to the municipality up to 10 acres in each townsite for school, park and other public purposes, and to pay 20% of the money the Tribe received from the sale of its town lots for the construction of schools, other public buildings and improvements in the towns and to credit the Indians with the balance. The donation of 20% of the Tribe's receipts from the sale of lots to pay for public structures in towns, and the donation of up to 10 acres of tribal land for schools, parks and other purposes, is consistent with retaining the reservation status so that reservation Indians might share in the benefits their money helped create.

Given the rule governing the construction of Indian statutes, the townsite language lends support to preserving the reservation status and is inconsistent with an implication of termination. The court below ignored the language.

F. The allotment provisions do not support termination by implication and confirm that none of the three Rosebud Acts terminated any part of the Rosebud Reservation. This Court has made plain that allotment provisions in a statute opening an Indian reservation to settlement are "completely consistent with continued reservation status" and that "[T]he presence of allotment provisions * * * cannot be interpreted to mean that the reservation was to be terminated." *Mattz v. Arnett*, 412 U.S. 481, 497, 504 (1973); *DeCoteau v. District County Court*, 420 U.S. 425, 444 (1975). If the Rosebud statutes had prohibited allotments in the opened areas, or

had provided for moving allottees out of the opened area into the "closed" portion of the reservation, there might be room for the argument that such provisions supported the implication of termination deduced below. But that is not what happened.

The 1904 Act. When Inspector McLaughlin came on the reservation in the Spring of 1901 to negotiate an outright cession for the Gregory county area (p. 7, *supra*), there were 4917 Indians living on the reservation, 4508 allotments had been made pursuant to the 1889 Act, and of those 4508 allotments, 452 were in the Gregory county portion of the reservation. CIA 1901, pp. 371, 372, CIA 1903, p. 318; S. Rept. No. 662, 57th Cong., 1st sess., p. 4 (1902). (App. 283). The 1904 Act contains no allotment provisions, doubtless because it pretended to be a ratification of McLaughlin's 1901 agreement, which, if it had been ratified, would have been an outright cession. Neither does the 1904 Act contain provisions disturbing the allotments, or Indians resident in Gregory county. On the contrary, section 2 of the Act reserved Gregory county land for agency, Indian school and religious purposes, even though no such provision was in the unratified 1901 agreement. (See p. 46, *supra*.)

The 1907 Act allotment provisions. The allotment provision in section 2 of the 1907 Act did two things. First, it empowered the Secretary to permit any Indian allotted "within the Rosebud Reservation" to relinquish and select a lieu allotment "anywhere within said reservation" and second, it directed the Secretary to allot 160 acres to each eligible, unallotted child before the land was opened.

The purpose of the first feature was to take care of some 80 Indians who had been allotted poor quality

lands and wished to exchange for better allotments.⁴⁹ The purpose of the second feature was to grant allotments to the 600 or 700 children who had not received allotments.⁵⁰ Allotments to satisfy both demands could be made anywhere within the reservation, including Tripp county, the land that was being opened.

The Council proceedings show that on December 15, 1906 the Indians presented a paper to Inspector McLaughlin setting out their demands. The demand labelled "1st," requested that no lands be disposed of "until after the unallotted children have received land * * *". (App. 781.) The demand labelled "8th" related to the 80 allotments. (App. 784.)⁵¹ As to the "1st", McLaughlin answered (App. 781): "I can positively promise you that, in case we reach an agreement, it will provide for the allotment of lands to all children born since March 3, 1899, and *they may be allotted in Tripp County and before the lands are opened.*" As to the "8th", the 80-allotment request, McLaughlin answered (App. 784):

* * * In answer to that I will say there will be no difficulty in that. All beneficiaries of the reservation who have not yet received allotments can be allotted before Tripp County is

⁴⁹The reference to the 80 Indians appears in the Council minutes for December 14, 1906, (App. 784).

⁵⁰At the Council meeting held January 18, 1907, the Agent stated there were "probably six or seven hundred" persons entitled to allotments. Minutes of Council meeting January 18, 1907, (App. 841).

⁵¹The court of appeals opinion sets out, word for word, the "8th" demand relating to the 80 allotments (Pet. App. 43, n. 87) but says nothing about the "1st" demand calling for allotments for the children.

opened to settlement, and they can take them anywhere on the reservation, including Tripp County. There will be a provision in the agreement to that effect.

McLaughlin made crystal clear that the Tripp county land would be available for both the new and the lieu allotments.⁵² The statute carried out his promise. Section 2 of the 1907 Act (first proviso)⁵³ carried out the allotment feature just as McLaughlin explained it to the Indians and just as the Indians understood it.⁵⁴ That is how the act was administered and the allotments made. Of the 1,083,680 acres in Tripp county, about 138,000 acres had been allotted at the time McLaughlin was conferring with the Indians, (App. 840). As of June 30,

⁵²At the Council meeting held January 18, 1907, Inspector McLaughlin stated that there were "about 907,000 acres unallotted [in Tripp county] as it now stands. *When the children, and those who desire to change their allotments* are allotted, [meaning the 80 poor allotments] should they select lands in Tripp County, it will reduce the acreage greatly." (App. 840.)

⁵³"*Provided*, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment * * * anywhere within said reservation, and he *shall also allot [to each eligible child]* * * * *who has not heretofore received an allotment:* * * *."

⁵⁴"'Indian treaties * * * are to be construed in the sense in which naturally the Indians would understand them.'" *Peoria Tribe of Indians v. United States*, 390 U.S. 468, 472 (1968), quoting from *United States v. Shoshone Tribe*, 304 U.S. 111, 116 (1938).

"* * * this Court has often held that treaties with the Indians must be interpreted as they would have understood them,* * *" *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970).

See (App. 766-868) for pertinent excerpts from the 1906-1907 councils conducted by Inspector McLaughlin respecting the Indians' understanding of the allotment provisions.

1925, 406,081.75 acres in Tripp county were in allotments GAO Rept. p. 1653, (App. 1392A). Since there could be no allotments once the Tripp county land was opened, very substantial acreage must have been allotted prior to March 1, 1909 when the land was opened. (37 L.D. 122.) Obviously, the allotments in Tripp county were not limited to 80 Indians dissatisfied with their allotments.

The district court said nothing about the provision for the 600 or 700 new allotments and confined itself to so much of the allotment language as dealt with relinquishment of the 80 low quality allotments. The district court misread that language to permit relinquishment and removal only to the "diminished portion of the reservation". Based on this combination of errors, the district court concluded that the "clear import of that section is that the Indians in the portion soon to be opened, were allowed to relinquish that part of the reservation and remove to the diminished portion of the reservation." (Pet. App. 93.)

There is no "diminished" language in the 1907 Act. Nevertheless, the court of appeals supported the district court's conclusion. The court of appeals, like the district court, was silent on the provision for 600 or 700 allotments for the children. (See p. 50, n. 53, *supra*.) Nor did the court of appeals make reference to the clear understanding given to the Indians by Inspector McLaughlin that all allotments, new and lieu, could be made in Tripp county. The court limited itself to the relinquishment language for the 80 allottees, which, it explained, did no more than permit prior allottees of poor land to select new allotments in Tripp county. (Pet. App. 42-44.)

No statute, let alone Indian statutes, may be correctly construed without considering all of the language. A provision for fresh allotments in the opened area in Tripp county may not be ignored. Moreover, even if the statute had provided only for the 80 allottees, and had omitted allotments for the 600 or 700 children, the provisions still would be totally inconsistent with the "clear" intent essential to terminate reservation status. The allotment provisions of the 1907 Act, as explained to and understood by the Indians, cannot be reconciled with an intent to terminate the reservation status of Tripp county. If Congress had intended to terminate, it hardly would have authorized hundreds of 160-acre allotments anywhere on the reservation, including Tripp County.

The 1910 Act allotment provisions. Section 1 of the 1910 Act authorized the Secretary to open Mellette county "except such portions thereof as have been or may *hereafter* be allotted to Indians." The first proviso of section 1 of the 1910 Act conferred on any Indians with allotments "on the tract to be ceded" (Mellette county) the option of relinquishing and receiving lieu allotments "on the diminished reservation". The first proviso of section 2 of the 1910 Act provided that before the Mellette county lands were proclaimed open "the allotments [in Mellette county] shall have been completed."

This language undisputedly authorized new allotments in Mellette county before it was opened to settlers.⁵⁵

⁵⁵The Senate committee report confirms that new allotments could be made "to those so desiring allotments within the area described in section 1 of this bill [Mellette county]", S. Rept. No. 68, 61st Cong., 2d sess., p. 2 (1910), (App. 1238). This was the administrative view. The Bureau of Indian Affairs construed the language to mean that the 1910 Act "provides for allotments in the opened territory to every man, woman, and child who has not heretofore received an allotment;* * *." (App. 1284.)

Whether the phrase "diminished reservation", used in the lieu allotment provision, included or excluded Mellette county is less certain.⁵⁶ From a common sense viewpoint, there is no apparent reason why Congress would explicitly authorize new allotments in Mellette county and at the same time forbid an allottee resident in Mellette county from selecting another allotment in the county of his residence.

As in the case of the 1907 Act, both courts below totally ignored the provision authorizing new allotments in Mellette county and confined themselves to the word "diminished" in the lieu allotment provision. The district court construed the lieu allotment provision to give the Mellette county allottees a move or lose option. Either surrender their allotments and take new allotments on what was left of the court's concept of the reservation, or stay in Mellette county and give up the benefits and privileges of a reservation Indian. To the district court, the "diminished" feature was "the strongest indication yet that the area in question was no longer to be considered 'Indian land'". Congress, in effect, offered to allow Indians to exchange and take their allotments in what would continue to be Indian land so that they might continue to benefit from all of the programs that the government had on the reservation. They need not retain their allotment in what was no longer to be

⁵⁶The Senate committee report recites that the Secretary "may permit Indians who have allotments within the area proposed to be opened to relinquish such allotments and to receive in lieu thereof allotments anywhere within the reservation proposed to be diminished." S. Rept. No. 68, 61st Cong., 2d sess., p. 3 (1910), (App. 1238-1239). The phrase "proposed to be diminished" could include Mellette county since the reservation "proposed" to be diminished would include Mellette county.

considered a reservation. *Clearly, there is no other reasonable explanation for such a provision.*" (Pet. App. 106.)

The court of appeals agreed. (Pet. App. 53-55.)

About the time of the Act of May 30, 1910, there were well over 1000 Indians and more than 1949 allotments in Mellette county. *Indian Population in United States and Alaska 1910*, (GPO 1915). (See p. 43, n.45, *supra*.) The President opened the land for settlement sixteen months later, on October 2, 1911 (40 L.D. 164). According to the courts below, Congress authorized fresh allotments in Mellette county, and at the same time terminated that portion of the reservation. According to the courts below Congress authorized new allotments in Mellette county and at the same time told well over 1000 resident Indians that if they wanted to remain reservation Indians and receive the benefits of Government programs, they had 16 months in which to relinquish their homes in Mellette county, surrender their improvements to the land, uproot their families and community ties, and remove themselves and their belongings to whatever allotments could be found in the picked-over remainder of what constituted the lower courts' 1910 version of the "reservation"—i.e., Todd county.

The rules governing the construction of Indian statutes preclude the move or lose interpretation. First, *all*, not *some*, of the allotment language must be considered. Second, "diminished" may include Mellette County (p. 53, *supra*). Third, proper construction requires that the phrase "diminished reservation", as used in the 1910 Act, be delegated its place in the total context. Before this Court's decision in *DeCoteau*, the court of appeals rejected the contention that the expression "diminished reservation", and the stronger expression "restored to the

public domain", were proof of the Congressional intent to dissolve the Cheyenne River reservation under the Act of May 29, 1908, c. 218, 35 Stat. 460 (p. 14a, Item 15, *infra*). *United States ex rel. Condon v. Erickson*, 478 F.2d 684, 687-688 (C.A. 8, 1973). There is no reason here to discuss the phrase "restored to public domain" because it does not appear in any of the Rosebud statutes. As to "diminished", in *Condon*, the court of appeals pointed out that the reservation may be "diminished in land size * * * without changing the reservation's boundaries" (*idem*, p. 688). In this case, the court below makes no reference to *Condon* with respect to its construction of the phrase "diminished reservation".

"Diminished" also may have been used as a shorthand term of identification. Compare *Mattz v. Arnett*, 412 U.S. 481 (1973). There the statute directed that all of the surplus lands embraced in "what *was* the Klamath River Reservation" be opened under the public land laws. The Court stated (pp. 498-499) that the reference to the reservation in the past tense "is not to be read as a clear indication of congressional purpose to terminate. * * * The reference * * * in the past tense seems, then, merely to have been a natural, convenient, and shorthand way of identifying the land subject to allotment under the 1892 Act. We do not believe the reference can be read as indicating any clear purpose to terminate the reservation directly or by innuendo."

The allotment provisions cannot be reconciled with a "clear" intent to terminate. On the other hand, it is perfectly consistent to open reservation land to settlement after first providing for allotments in the opened area. This comports with one of the justifications for opening the land—to afford the Indian the opportunity to learn from his nonIndian brother. *Seymour v. Superin-*

tendent, 368 U.S. 351, 356 (1962); *Mattz v. Arnett*, 412 U.S. 481, 497 (1973). See H. Rept. 443, 58th Cong., 2d sess., p. 3 (1904); 45 Cong. Rec. 5457 (April 27, 1910), (App. 1111).

G. The school land grant provisions of the three statutes affirmatively confirm that Congress did not terminate any part of the reservation. South Dakota, North Dakota, Montana and Washington, all came into the Union under the same Enabling Act of February 22, 1889, c. 180, 25 Stat. 676. Section 10 of that Act granted to each state, upon admission, school sections 16 and 36 in each township in the proposed state, or lands in lieu thereof. The grant expressly excluded "any lands embraced in Indian, * * * reservations * * * until the reservation shall have been extinguished and such lands be restored to, and become part of, the public domain." (Pet. App. 28-29.) Each of the three Rosebud statutes reserved the school sections from entry and granted them, or land in lieu thereof, to the State with the preferential right to select before the land was opened to entry.⁵⁷

The Tribe's position is that if the school grant language had been omitted from the three Rosebud Acts, the State would not have received the school lands. The grant in Section 10 of the Enabling Act did not extend to Indian land for the reason that none of the three Rosebud statutes extinguished the reservation and placed the lands in the public domain. *Minnesota v. Hitchcock*, 185 U.S. 373, 391-392 (1902).

⁵⁷1904 Act—sec. 4; 1907 Act—sec. 6; 1910 Act—sec. 8, (pp. 6a, 9a, 13a, *infra*). In each instance the lieu lands were to be selected within the area opened.

The court of appeals discussed the school grant provisions in connection with the 1904 Act (Pet. App. 28-31) and extended those views to the 1907 and 1910 Acts (Pet. App. 38, 53). The court of appeals concluded that Congress placed the school grant in the 1904 Act "to implement the grant in the enabling act and for no other reason" and that the Congressional action "was premised solely upon an understanding that the reservation would be extinguished * * *." (Pet. App. 31.) The court traced the grant to the debates on an amendment to a Senate bill to ratify the 1901 agreement to cede the Gregory county land for a sum certain. (Pet. App. 29.) The amendment would have granted the school sections to the State. (The full text of the amendment is the same as Section 4 of the 1904 Act, p. 6a, *infra*; see pp. 7-8, *supra*.)

During the 1902 debate, Senator Gamble, the sponsor of the bill, correctly explained that the amendment was necessary because under the Enabling Act, Indian lands did not fall within the scope of the grant until "Indian title was extinguished and the lands restored to and became part of the public domain." (Pet. App. 29.) If the 1902 ratification bill had become law without the amendment, the land would not have been subject to the general school grant.⁵⁸

The court of appeals also quoted from the House debate in 1904 on the school grant language in the bill that became the Act of 1904. (Pet. App. 30.) Congressman Burke of South Dakota gave much the same explanation as Senator Gamble did in 1902—i.e., that under the Enabling Act, the State was entitled to the school lands. But unlike the 1902 explanation, the 1904 explanation was erroneous.

⁵⁸ "[Congress] * * * could have by treaty taken simply a cession of the Indian rights of occupancy, and thereupon the lands would have become public lands and within the scope of the school grant." *Minnesota v. Hitchcock*, 185 U.S. 373, 394 (1902).

The 1902 debate was on a bill to ratify an outright cession for a sum certain. The 1904 debate was on the bill that became the 1904 Act. (See pp. 10-11, *supra*.) Since the 1904 Act was not a cession and did not extinguish the Indian title or the reservation, the land opened was not subject to the school grant in the Enabling Act. *Minnesota v. Hitchcock*, 185 U.S. 373, 391-392 (1902). For that reason, if the State was to receive the school lands, it was essential to insert the special school land grant into the 1904 Act.

The court of appeals' reasoning is difficult to follow. If, as the court holds, the three Rosebud statutes extinguished the reservation, there was no reason for the school land language,—the opened lands would have fallen within the grant set out in the Enabling Act. The court avoided this view. If the Tribe is right and the three Rosebud statutes did not extinguish the reservation, the school grant language was necessary in order to donate the lands to the State. The court below had no answer to the Tribe's view. The court seems to have rested its conclusion, not on what Congress *did* in the law itself, but on what the court thought Congress understood from what was said during the debates. (Pet. App. 31.) But in the imperfect process of seeking out the Congressional intent, there is no better evidence than the text of the statute itself. The language of the statute and the legal effect of that language, control. A reservation may be terminated by what Congress *does*, not by what the court believes some members of Congress may have understood. The erroneous delivery or understanding of facts or law, by members of Congress, or even a committee of Congress, does not alter the meaning of the statute itself. *Chippewa Indians v. United States*, 301 U.S. 358, 374-375 (1937). See also, *United States v. O'Brien*, 391 U.S. 367, 384 (1967).

H. The liquor law provisions of the 1910 Act affirmatively confirm that Congress did not terminate the reservation status. Section 10 of the 1910 Act extended for 25 years—the term of the trust patents issued to allottees—the Federal Indian liquor laws, prohibiting the introduction of intoxicants into Indian country, to all land, Indian and nonIndian, trust and fee, in the area to be opened (Mellette county).⁵⁹ If Section 10 had been omitted, only land held in trust would have been subject to the proscription against the introduction of intoxicants into Indian country. Liquor could have been introduced on the school lands, on fee lands, whether in the towns, or on the lands taken up by the settlers, and up to 1916, could have been sold to Indian allottees on such lands.

This is so because in 1910 it was a crime to sell liquor to an Indian ward, or allottee, anywhere in the United States, and it was a crime to introduce intoxicants into "Indian country". Act of July 23, 1892, c. 234, 27 Stat. 260, (Pet. App. 55, n. 126). Prior to the 1948 statutory definition of "Indian country" (18 U.S.C. 1151), and at the time of the 1910 Act, the case law limited "Indian country", as used in the Federal Indian liquor laws, to trust land, i.e., land to which the Indian title had not been extinguished. *Clairmont v. United States*, 225 U.S. 551, 557-559 (1912); *Dick v. United States*, 208 U.S. 340,

⁵⁹The full text of Section 10 reads:

"That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, granted to the State of South Dakota, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country."

359 (1908); *United States v. Le Bris*, 121 U.S. 278, (1887); *Bates v. Clark*, 95 U.S. 204, 207-208 (1877); including trust allotments, *United States v. Pelican*, 232 U.S. 442, 449-450 (1914); *United States ex rel. Condon v. Erickson*, 478 F.2d 684, 688 (C.A. 8, 1973). In addition, under a decision in effect from 1905 until 1916, upon receiving a trust allotment, an Indian became a citizen free of the Indian liquor laws. *Matter of Heff*, 197 U.S. 448 (1905), ignored in *Hallowell v. United States*, 211 U.S. 317 (1911) and expressly overruled by *United States v. Nice*, 241 U.S. 591 (1916); Cohen, Felix S., *Handbook of Federal Indian Law*, p. 157 (GPO 1945).

This meant that in 1910, under *Matter of Heff*, *supra*, it was lawful to sell liquor to an Indian allottee, but not to an unallotted Indian, anywhere in the United States where it was otherwise lawful to introduce liquor. In addition, in 1910, under the Federal liquor laws, it was lawful to introduce intoxicants onto nontrust land ~~on~~ ^{i.e. trust land}, on or off the reservation, but it was unlawful to introduce intoxicants ~~and~~ ^{into} nontrust land on the reservation. *Dick v. United States*, *supra*, p. 359. If Section 10 had not been included in the 1910 Act, liquor could have been lawfully introduced on nontrust land, and up to 1916, when *Heff* was overruled, could have been lawfully sold to nonIndians and Indian allottees on nontrust land on the reservation. Section 10 conferred the same protection that existed before the 1910 Act was enacted. Section 10 made Mellette County "dry" for everyone, Indian or nonIndian, whether on trust or fee land, for the 25-year period of the trust patent, regardless of *Matter of Heff*, *supra*. Section 10 enlarged, rather than diminished, the protection attaching to Indians on the Mellette County portion of the reservation. The liquor prohibition reflects continued Federal interest.

Even in the case of an outright cession and termination of a reservation, Congress sometimes included the liquor provision simply to protect both the Indian and non-Indian population on the ceded area, as in *Dick v. United States*, 208 U.S. 340 (1908). See *United States v. Mazurie*, 419 U.S. 544, 554 (1975). The court of appeals having assumed that the 1910 Act was a cession, read the liquor language to be nothing more than a *Dick* exercise of the Congressional power to control intoxicants on ceded land. (Pet. App. 55-59.) The court deemed "highly significant" (Pet. App. 58) statements made during the House debate by members, other than the manager or sponsors of the bill, reflecting a wholly erroneous understanding of the law and of the effect of the bill. For example: "*** when the lands are sold there is no longer a reservation,***" (Pet. App. 57.) "It is proposed now to make a sale of it to somebody [referring to settlers]" (*idem*, p. 58). "But if the lands are allotted it is no longer an Indian reservation"; "If the lands are allotted it will be no longer an Indian reservation. If the lands are sold it will be no longer an Indian reservation." (*Idem*, p. 58.) All these statements are contrary to law.

Here again, the court of appeals cast aside the language of the statute and its meaning under the law. The court interpreted the statute on the basis of the "understanding", conveyed by the erroneous statements made during the general debate. The understanding of those members, not the correct law and the legal effect of the statute, controlled the court of appeals' conclusion that the liquor provision—

"*** is the continuation of the policy, heretofore adopted and implemented, of reducing the size of the Rosebud reservation in order to make a portion of its lands available to the new settlers.

Again, the congressional motivations are clear, as is its intent." (Pet. App. 59.)

The court of appeals erred in its use of the liquor provision. First of all, resort may be had to statements made during debate, by members, other than those in charge of or sponsoring the bill, only "to show common agreement on purpose as distinguished from interpretation of particular phraseology * * *." *Wright v. Mountain Trust Bank*, 300 U.S. 440, 463, n. 8 (1937). Second, the statute itself is the prime source of Congressional intent. In interpreting the meaning or the legal effect of a statute, the courts may not rely on the erroneous statements, concepts, or understandings of law or fact, even when expressed in a considered written committee report, let alone off-the-cuff observations on the floor of the House. *Chippewa Indians v. United States*, 301 U.S. 358, 374-375 (1937); *United States v. O'Brien*, 391 U.S. 367, 384 (1967).

Apart from all else, assuming that the liquor provision offers a choice between an interpretation that results in continuance of reservation status and one that calls for termination, the rules of construction governing Indian statutes, dictate that all doubts be resolved in favor of retaining the reservation status. (See pp. 26-28, *supra*.) The liquor argument underscores the approach of the court below. The court treated the presence of the liquor provision in the 1910 Act as a badge of termination. But the absence of the liquor provision in the 1904 and 1907 Acts did not influence the court below towards non-termination.

IV.

SUBSEQUENT LEGISLATION DOES NOT SUPPORT TERMINATION.

To support the conclusion of termination by the 1907 Act, the court of appeals considered a 1911 and a 1915 statute, both using the phrase "formerly a part of the Rosebud Indian Reservation", or equivalent, to be "[S]ubsequent enactments * * * [that] provide an authoritative contemporary construction." (Pet. App. 44, n. 88.) To confirm that the 1910 Act was a cession, the court cited a 1919 statute using the same phrase (Pet. App. 59, n. 134.) For a contrary view, the court might have cited more contemporaneous statutes, that granted time extensions to settlers but did not refer to the area as "formerly within the Rosebud Indian Reservation", but as "lands in the Rosebud Indian Reservation", as set out in the title to the 1907 and 1910 Acts. Act of March 26, 1910, c. 129, sec. 2, 36 Stat. 265, extending the time for making payments under the 1907 Act; Act of May 28, 1914, c. 102, sec. 1, 38 Stat. 383, extending the time for making payments under the 1910 Act.

For the 1904 Act, the court below did not, but might have, cited the Act of March 3, 1909, c. 263, 35 Stat. 781, 809-810 authorizing the Secretary to issue a fee patent "for the land set apart to the Catholic Church on the Rosebud * * * Reservation,* * * as follows: * * * at or near Ponca Creek [describing land in Section 7, Township 96 North, Range 71 West, of the 5th P.M.]", opened by the 1904 Act.

By the Act of August 20, 1964, 78 Stat. 560, Congress transferred to the Tribe "All the right, title, and interest in and to the following described tracts of land * * * on

the Rosebud Sioux Reservation in South Dakota * * * [describing land in T. 42 N., R. 33 W., in Mellette county]."

By the Act of October 17, 1975, 89 Stat. 577, Congress transferred title to certain "submarginal lands" to 17 tribes, including Rosebud, and specified that the land transferred in trust "shall be a part of the reservations heretofore established for each of the said tribes." S. Rept. 94-377, 94th Cong., 1st Sess., pp. 1, 3 (1975); 121 Cong. Rec. S 16279-80 (September 19, 1975); H. Rept. 94-480, 94th Cong., 1st sess. (1975); 121 Cong. Rec. H9635-9 (October 6, 1975); 121 Cong. Rec. S17685 (October 7, 1975). Part of the 28,734.59 acres transferred to Rosebud is located in Mellette county, deemed "a part of the reservation".

Viewed as a whole, subsequent statutes are not reliable indicators of the Congressional intent expressed in an earlier statute, *Mattz v. Arnett*, 412 U.S. 481, 505, n. 25 (1973). And pre-*DeCoteau*, that was the view below. *City of New Town, North Dakota v. United States*, 454 F.2d 121, 125 (1972). None of the subsequent statutes cited by the court of appeals, or for that matter cited by the Tribe, contains language deliberately chosen to express a Congressional intent one way or the other with respect to the termination of any part of the Rosebud Reservation. Congress was not focusing on the issue in those statutes.

V.

CONGRESS AND THE DEPARTMENT OF THE INTERIOR HAVE CONSISTENTLY TREATED AND ADMINISTERED THE OPENED AREAS AS PART OF THE ROSEBUD RESERVATION.

A. Congress has consistently appropriated for the entire reservation. Ever since the 1889 Act, and continuing at present, Congress has appropriated funds to maintain an agency on the reservation with Federal employees to administer to the health, welfare and safety of Indians on the reservation, and to protect and manage trust property on the reservation. The United States has provided for schools, hospitals, clinics, medical services, social services, housing, the administration of justice, courts, jails, police, fire suppression, road construction and maintenance, credit, management of realty and other services. (See letter dated August 23, 1974 from the Acting Area Director, Bureau of Indian Affairs, Aberdeen, to Neil Proto, Esquire, Department of Justice.) (App. 1405-1408.)

B. The opened areas were administered as part of the reservation. Before and after the enactment of the three Rosebud statutes, the reservation was divided into seven "Farmer" districts each administered by a Federal officer termed "Farmer". CIA 1904, p. 371; CIA 1904, p. 334, (App. 523, 529). The seven districts are outlined on the map at page 17a, *infra*.

Within the seven "Farmer" districts, both before and after the three Rosebud statutes, there were at least 21 day schools, three boarding schools, eight issue stations and the Agency headquarters. (App. 523.) Issue stations and day schools were located in each district. The Farmer's headquarters for each district generally were located at the issue station where the Indians received their rations, supplies and instructions from the Farmer. (App. 523, 1320-1321.)

Reservation-wide reports, made shortly after the third Rosebud statute, leave no doubt but that all the opened areas had been and continued to be administered without interruption as part of the reservation. The Bureau of Indian Affairs made no distinction among Indians who resided on the reservation as defined by the 1889 Act. Such an Indian was a reservation Indian, whether or not he lived on an area opened by one of the three statutes. As of 1913, the table following shows by district, the location, Indian population, day schools and number of

DISTRICT*	LOCATION	DAY SCHOOLS	Popula- tion**	Allotments**	Appendix
1. Agency	All in Todd Co.	2	1200	Not Shown	1322
2. Cut Meat	All in Todd Co.	4	1000	1332	1322
3. Black Pipe	All in Mellette Co.	4	500	981	1322
4. Little White River	All in Mellette Co.	4	500	968	1322
5. Butte Creek	Todd & Mellette	4	800	1889	1322
6. Big White River	Tripp, Lyman, Gregory	2 (Tripp)	500	1700	1321
7. Ponca	Tripp & Gregory	1 (Gregory)	500	905	1321
TOTALS:		21	5000	5775***	

* The names, locations of the districts and day schools are shown on the map (p. 17a, *infra*). The day schools are listed in the Superintendent's report of September 18, 1913, (App. 1324).

** The number of allotments and the populations are set out in the Superintendent's report of April 26, 1913, (App. 1320-1323).

*** Does not include the allotments in the Agency district.

Contemporaneous with, and after the three Rosebud statutes were enacted, all seven districts were administered as part of the reservation. The "Farmer", equivalent of an assistant superintendent, resided in each district, schools and teachers were maintained in each district, the issue station was operated in each district. The evidence shows continued construction and maintenance of the Government buildings. Communications among the Federal administrative officers, and between the Indians and those officers, referred to areas in the opened counties as part of the reservation. (App. 1409-1412) for a collection of excerpts from materials covering the period 1907-1921.)

C. The construction and administration of the Indian Reorganization Act of June 18, 1934, confirms that the Department of the Interior did not regard any part of the Rosebud Reservation as terminated. During the decades 1910-1930, there was no significant general or special legislation touching the problem before the Court. *Federal Indian Law*, pp. 121-127 (GPO 1958). The next decade was notable for the enactment of the Indian Reorganization Act of June 18, 1934, c. 576, 48 Stat. 984, 25 U.S.C. 461 *et seq* (IRA). That Act "reflected a new policy of the Federal Government and aimed to put a halt to the loss of tribal lands through allotment. * * * tribes were encouraged to revitalize their self-government * * * with power to conduct the business and economic affairs of the tribe." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 151 (1973).

1. Section 19 of the Indian Reorganization Act (25 U.S.C. 479). This section defined "Indian" to include members of any recognized tribe and the descendants of such members "residing within the present boundaries of any Indian reservation * * *." Rosebud accepted the provisions of the Act in 1935. (App. 1396.) Ever since 1889, the Department of the Interior and the Indian Health Service have consistently administered the reservation as embracing the opened areas. The three Rosebud statutes were not administratively construed to shrink the bounds of the reservation. No Indian who resided on the Rosebud Reservation as defined by the 1889 Act, has been excluded from Federal benefits, privileges and services as an off-reservation Indian. (See p. 66, *supra*.) The decision below rejects the consistent administrative construction.

2. Sections 2 and 8 of the Indian Reorganization Act (25 U.S.C. 462, 468.) These two sections, read together, extend the period of trust on allotments until otherwise directed by Congress, except for allotments "upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter." The Department of the Interior has construed these sections to extend the trust on all allotments on the Reservation as defined in 1889 Act. Executive Orders of October 20, 1928, January 16, 1929, March 12, 1930 and December 30, 1931, V Kappler 680, 667, 681 and 642. But, if the decision below is correct, and the opened areas are in the public domain, thousands of allotments in Gregory, Tripp and Mellette counties are outside the boundaries of the Rosebud Reservation and the trust on those allotments has long expired.

This single consequence would be calamitous. Stripped of trust status, Indians could expect their land to be charged with accrued taxes and lost. Allottees would learn how empty the promise the United States wrote into the patents, to transfer the fee "free of all charges or incumbrance whatsoever". *Squire v. Capoeman*, 351 U.S. 1, 6 (1956). The revolutionary results flowing from the judicial termination below would be "'at the least, a sorry breach of faith with these Indians'". (*Idem*, p. 10.)⁶⁰

⁶⁰The proponents of the South Dakota drive to wipe out the Indian reservations, operating under the euphemism of "Civil Liberties for South Dakota Citizens", would have accomplished their prime objective—to move Indian trust land out of Federal

[Footnote continued]

To reach the conclusion that thousands of allotments lost their trust status, the Court below *sub silentio* overruled its own holding in *Putnam v. United States*, 248 F.2d 292 (C.A. 8, 1957). In that case, the court construed the Pine Ridge 1910 Act, which became law three days before the Rosebud 1910 Act. The two statutes are "substantially identical". *United States ex rel. Cook v. Parkinson*, 525 F.2d 120 (C.A. 8, 1975) pending on petition for a writ of certiorari, No. 75-5867, filed December 8, 1975. In *Putnam*, the court below held that the trust period had not expired on an allotment in Bennett County, opened by the Pine Ridge statute, because the allotment was within the Pine Ridge Reservation as delimited in the same 1889 Act defining the Rosebud Reservation. The court stated (p. 295):

"* * * These allotted lands must be deemed to be among those which were not restored to the 'public domain', having been specifically excepted in the Act of May 17, 1910, from the portion of the Reservation which was open to settlement."

In its recent decision in *Parkinson, supra*, the court below construed the same 1910 Act that was before it in

protection. There are six surplus land acts affecting Standing Rock, Cheyenne River, Rosebud and Pine Ridge reservations in South Dakota (p. 14a, Items 2, 13, 15, 18, 19, 21, *infra*). All six are under attack. In this case, the court of appeals has judicially terminated three-fourths of the Rosebud Reservation (Items 2, 13, 19) and in *Parkinson*, the court wiped out a major part of the Pine Ridge Reservation (Item 18). The Federal district court in South Dakota recently held that the 1913 Act terminated the eastern one-half of the Standing Rock Reservation (Item 21). *United States v. Long Elk* and related cases now pending on appeal in the court below (Nos. 76-1385 through 1391). The Supreme Court of South Dakota has before it an appeal challenging the sixth statute (1908 Act) as to which the Federal district court in *Long Elk* expressed a strong dictum that the 1908 Act extinguished reservation status.

Putnam. Mainly on authority of its holding in *Rosebud* (*idem*, p. 123), the court held that "Bennett County, South Dakota, was severed from the Pine Ridge Indian Reservation by the Act of May 27, 1910 and became part of the public domain and the State of South Dakota." (*Idem*, p. 124.) No mention is made of *Putnam*. In short, the decision below places in jeopardy the trust status of tens of thousands of allotments on the reservations affected by surplus land statutes.

3. **Section 3 of the Indian Reorganization Act of 1934** (25 U.S.C. 463). Section 3 authorized the Secretary of the Interior "to restore to tribal ownership the remaining surplus lands of any Indian reservation opened before June 18, 1934, or authorized to be opened, to sale, or any other form of disposal * * *." Acting under that authority, the Secretary explicitly listed for withdrawal from disposal, and for restoration to the Tribe, the undisposed of land on the Rosebud Reservation opened by the 1904, 1907 and 1910 Acts. The Secretary identified Rosebud as one of the "reservations where lands have been opened, the Indians to receive the proceeds of sale only as the tracts are disposed of." (54 I.D. 559, 561, 562 (1934)). That decision exemplifies the administrative view that the reservation was not dissolved. *Seymour v. Superintendent*, 368 U.S. 351, 357 (1962).

D. The Secretary of the Interior approved the Tribal Constitution defining the reservation as delimited in the 1889 Act. Rosebud was among the first tribes to adopt a Constitution under the Indian Reorganization Act. Constitution approved December 20, 1935, (App. 1396). Article I of the tribal Constitution defines the jurisdiction of the Tribe as extending "to the territory within the original confines of the Rosebud Reservation boundaries as established by the act of March 2, 1889, * * *."

(App. 1394.) The Secretary of the Interior approved the Constitution. The territorial scope of the Tribe's sovereignty over Indians has never been in doubt.

The 1935 Constitution divided the entire reservation as defined in the 1889 Act, into election districts designated "communities". (App. 1394.) The Indians in each district elect councilmen to the Tribal Council, the governing body of the Tribe, including councilmen from Gregory, Tripp and Mellette counties. The Council consistently has regarded the entire area as part of the reservation.

E. The Field Solicitor for the Department of the Interior considered that no part of the reservation was disestablished. By memorandum dated April 6, 1972, the Field Solicitor for the Department of the Interior at Aberdeen, South Dakota, expressed the opinion that none of the three Rosebud Acts disestablished any part of the Rosebud Reservation. (App. 1403-1404.) The opinion rests primarily on an analysis of the language of the three statutes, underscoring the absence of language of termination and language placing the land in the public domain, and on authority of a comprehensive opinion of the Solicitor construing the Fort Berthold 1910 Act that became law two days after the Rosebud 1910 Act (p. 14a, Items 19, 20, *infra*). Both acts are virtually identical. The Solicitor ruled that the Fort Berthold Act did not terminate the reservation status. *Boundaries of the Fort Berthold Indian Reservation in North Dakota*, M-35802, (March 13, 1970 (unpublished)).

CONCLUSION

The policy of the United States towards Indian tribes has not been static. From decade to decade, different policymakers have imposed their cure for what they considered to be the problem, ranging from assimilation to relocation off the reservation and from termination of the Federal relationship to the current recognition that the reservation is home, with the "focus upon strengthening tribal self-government * * *." *Bryan v. Itasca County, Minnesota*, ____ U.S. ____, No. 75-5027, slip op. p. 15 n. 14, June 15, 1976; *Federal Indian Law*, pp. 115-136 (GPO 1958); *A History of Indian Policy*, S. Lyman Tyler, pp. 151-186 (GPO 1973). Through it all, the reservation retained its status. The ongoing special relationship between the United States and Indian tribes was never disturbed unless Congress acted affirmatively to dissolve it, as in the case of the Klamath, the Menominees and others listed in *Bryan v. Itasca County, Minnesota, supra*, n. 15.

The judgment of the court of appeals should be reversed with directions to enter a judgment declaring that no part of the Rosebud Reservation, as delimited in the 1889 Act, has been terminated or extinguished.

Respectfully submitted,

MARVIN J. SONOSKY
2030 M Street, N.W.
Washington, D.C. 20036
Attorney for the Petitioner.

August 1976

APPENDIX

APPENDIX

[Act of April 23, 1904, c. 1484, 33 Stat. 254, 3 Kappler 71]

- [71] CHAP. 1484.—An act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

Whereas James McLaughlin, United States Indian inspector, did, on the fourteenth day of September, anno Domini nineteen hundred and one, make and conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement made and entered into on the fourteenth day of September, nineteen hundred and one, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

ARTICLE I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating four hundred and sixteen thousand (416,000) acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

ARTICLE II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to expend for and pay to said Indians, in the manner hereinafter provided, the sum of one million and forty thousand (1,040,000) dollars.

- [72] ARTICLE III. It is agreed that of the amount to be expended for and paid to said Indians, as stipulated in Article II of this agreement, the sum of two hundred and fifty thousand (250,000) dollars shall be expended in the purchase of stock cattle, of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls, for issue to said Indians, to be distributed as equally as

possible among men, women, and children as soon as practicable after the ratification of this agreement, and that the sum of seven hundred and ninety thousand (790,000) dollars shall be paid to said Indians per capita in cash in five annual installments of one hundred and fifty-eight thousand (158,000) dollars each, the first of which cash payments shall be made within four months after the ratification of this agreement.

ARTICLE IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

ARTICLE V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement.

ARTICLE VI. This agreement shall take effect and be in force when signed by U. S. Indian Inspector James McLaughlin and by three-fourths of the male adult Indians parties hereto, and when accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, U. S. Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at Rosebud Indian Agency, South Dakota, this fourteenth day of September, A. D. nineteen hundred and one.

JAMES McLAUGHLIN,
U. S. Indian Inspector.

No.	Name.	Mark.	Age.
1	He Dog.....	x	65
2	High Hawk.....	x	50
3	Black Bird.....	x	62
and 1,028 more Indian signatures.)			

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Agency, South Dakota; that it was fully understood by them before signing, and that the foregoing signatures, though names are

similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

WILLIAM BORDEAUX, Official Interpreter.
Wm. F. SCHMIDT, Special Interpreter.

ROSEBUD AGENCY, S. DAK., October 4, 1901.

[73] We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and the 1,031 Indians of the Rosebud Agency, S. Dak., to the foregoing agreement.

FRANK MULLEN, Agency Clerk.
C. H. BENNETT, Farmer, Cut Meat District.
JOHN SULLIVAN, Farmer, Black Pipe District.
FRANK ROBINSON, Farmer, Little White River District.
FRANK SYPAL, Farmer, Butte Creek District.
ISAAC BETTELYOUN, Farmer, Big White River District.
JAMES A. McCORKLE, Farmer, Ponca District.
LOUIS BORDEAUX, Ex-Farmer, Agency District.

ROSEBUD AGENCY, S. DAK., October 4, 1901.

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, S. Dak., is 1,359, of whom 1,031 have signed the foregoing agreement, being 12 more than three-fourths of the male adult Indians of the Rosebud Reservation, S. Dak.

CHAS. E. MCCHESENEY,
United States Indian Agent.

ROSEBUD AGENCY, S. DAK., October 4, 1901.

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended and modified, as follows:

"ARTICLE I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one north; thence east along said township line to the point

of beginning, the unallotted land hereby ceded approximating four hundred and sixteen thousand acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

"ART. II. In consideration of the land ceded, relinquished, and conveyed by article one of this agreement, the United States stipulates and agrees to dispose of the same to settlers under the provisions of the homestead and town-site laws, except sections sixteen and thirty-six, or an equivalent of two sections in each township, and to pay to said Indians the proceeds derived from the sale of said lands; and also the United States stipulates and agrees to pay for sections sixteen and thirty-six, or an equivalent of two sections in each township, two dollars and fifty cents per acre.

[74] "ART. III. It is agreed that of the amount to be derived from the sale of said lands to be paid to said Indians, as stipulated in article two of this agreement, the sum of two hundred and fifty thousand dollars shall be expended in the purchase of stock cattle, of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children, but not more than one half of the money received in any one year shall be expended as aforesaid, and the other half shall be paid to said Indians per capita in cash, and an accounting, settlement, and payment shall be made in the month of October in each year until the lands are fully paid for and the funds distributed in accordance with this agreement: *Provided, however,* That not more than five hundred thousand dollars shall be expended or paid within two years after the ratification of this agreement, and not to exceed one hundred and fifty thousand dollars in each of the following years until the expiration of five years.

"ART. IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

"ART. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement."

SEC. 2. That the lands ceded to the United States under said agreement, excepting such tracts as may be reserved by the President, not exceeding three hundred and ninety-eight and sixty-seven one-hundredths acres in all, for subsistence station, Indian day school, one Catholic mission, and two Congregational missions, shall be disposed

of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided,* That the rights of honorably discharged Union soldiers and sailors of the late Civil and the Spanish War or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged: *And provided further,* That the price of said lands entered as homesteads under the provisions of this act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, four dollars per acre, to be paid as follows: One dollar per acre when entry is made; seventy-five cents per acre within two years after entry; seventy-five cents per acre within three years after entry; seventy-five cents per acre within four years after entry, and seventy-five cents per acre within six months after the expiration of five years after entry. And upon all land entered or filed upon after the expiration of three months and within six months after the same shall be opened for settlement and entry, three dollars per acre, to be paid as follows: One dollar per acre when entry is made; fifty cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and fifty cents per acre within six months after the expiration of five years after entry. After the expiration of six months after the same shall be opened for settlement and entry the price shall be two dollars and fifty cents per acre, to be paid as follows: Seventy-five cents when entry is made; fifty cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and twenty-five cents per acre within six months after the expiration of five years after entry: *Provided,* That in case any entryman fails to make such payment or any of them within the time stated all rights in and to the land covered by his or her entry shall at once cease, and any payments heretofore made shall be forfeited, and the entry shall be forfeited and held for cancellation and the same shall be cancelled: *And provided,* That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry, as now provided by law, where the price of the land is one dollar and twenty-five cents per acre: *And provided further,* That all lands herein ceded and opened to settlement under this act, remaining undisposed of at the expiration of four years from the taking effect of this act, shall be sold and disposed of

[75]

for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one purchaser.¹

SEC. 3. That the proceeds received from the sale of said lands in conformity with this act shall be paid into the Treasury of the United States, and paid to the Rosebud Indians or expended on their account only as provided in article three of said agreement as herein amended.

SEC. 4. That sections sixteen and thirty-six of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, of the land in said county of Gregory are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

SEC. 5. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of seventy-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section four of this act.

SEC. 6. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein; or to guarantee to find purchasers for said lands, or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided.

Approved, April 23, 1904.

1 38 L. D., 213.

[Act of March 2, 1907, c. 2536, 34 Stat. 1230, 3 Kappler 307]

[307] CHAP. 2536.—An act to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range twenty-five west of the sixth principal meridian, except such portions thereof as have been, or may hereafter be, allotted to Indians: *Provided*, That sections sixteen and thirty-six of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose.

SEC. 2. That the land shall be disposed of by proclamation, under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: *Provided*, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot one hundred and sixty acres of land to each child of Indian parentage whose father or mother is or was, in case of death, a duly enrolled member of the Sioux Tribe of Indians belonging on the Rosebud Reservation who is living at the time of the passage and approval of this act and who has not heretofore received an allotment: *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late Civil and Spanish Wars or Philippines insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged.²

SEC. 3. That the price of said lands entered as homesteads under the provisions of this act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, six dollars per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall have opened for settlement and entry, four dollars and fifty cents per acre; after the expiration of six months after the

same shall have been opened for settlement and entry the price shall be two dollars and fifty cents per acre. The price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the same price that it was first entered.³ *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law, where the price of the land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry shall be sold to the highest bidder for cash at not less than two dollars and fifty cents per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold after the said lands have been opened to entry for seven years may be sold to the highest bidder for cash, without regard to the above minimum limit of price.

SEC. 4. That the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe, in accordance with section twenty-three hundred and eighty-one of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided.

SEC. 5. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the Rosebud Reservation, in the State of South Dakota, the sum of one million dollars, which shall draw interest at three per centum per annum for ten years, the interest to be paid to the Indians per capita in cash annually, share and share alike; that at the expiration of ten years, after one million dollars shall have been deposited as aforesaid, the said sum shall be distributed and paid to said Indians per capita in cash; that the balance of the proceeds arising from the sale and dispo-

sition of the lands as aforesaid shall be deposited in the Treasury of the United States to the credit of said Indians and shall be expended for their benefit under the direction of the Secretary of the Interior, and he may, in his discretion, upon an application by a majority of said Indians, pay a portion of the same to the Indians in cash, per capita, share and share alike, if in his opinion such payments will be for the best interests of said Indians.

SEC. 6. That sections sixteen and thirty-six of the lands in each township within the tract described in section one of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the tract described herein, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

SEC. 7. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one hundred and sixty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section six of this act. *And there is hereby appropriated the further* [309] *sum of fifteen thousand dollars, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein: Provided*, That the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Rosebud Indians.

SEC. 8. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided: *Provided*, That nothing in this act shall be construed to deprive the said Indians of the Rosebud Reservation, in South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act.

Approved, March 2, 1907.

[Act of May 30, 1910, c. 260, 36 Stat. 443, 3 Kappler 459]

[459] CHAP. 260.—An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh Counties in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh, south of the White River, and being described and bounded as follows: Beginning at a point on the third guide meridian west where the township line between townships thirty-nine and forty intersects the same, thence north along said guide meridian to the middle of the channel of White River, thence west along the middle of the main channel of White River to the point of intersection with the line dividing the Rosebud and the Pine Ridge Indian Reservations, thence south along the boundary line between said reservations to the township line separating townships thirty-nine and forty, thence east along said township line to the place of beginning, except such portions thereof as have been or may be hereafter allotted to Indians or otherwise reserved, and except lands classified as timber lands: *Provided*, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation: *And provided further*, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: *And provided further*, That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other authority, of any religious organization heretofore engaged in mission or school work on said reservation for such lands thereon (not included in any town site hereinafter provided for) as have heretofore been set apart to such organization for mission or school purposes.

SEC. 2. That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: *Provided*, That prior to said proclamation the allotments within the portion of the said Rosebud Reservation to be

disposed of as prescribed herein shall have been completed: *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Philippine insurrection as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes as amended by the act of March first, nineteen hundred and one, shall not be abridged.

SEC. 3. That before any of the land is disposed of, as hereinafter provided, and before the State of South Dakota shall be permitted to select or locate any lands to which it may be entitled by reason of the loss of sections sixteen or thirty-six, or any portions thereof, by reason of allotments thereof to any Indian or Indians, the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe; and he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than ten acres in any town site, and patents shall be issued for the lands so set apart and reserved for school, park, and other public purposes to the municipality legally charged with the care and custody of lands donated for such purposes. The purchase price of all town lots sold in town sites, as hereinafter provided, shall be paid at such time and in such installments as the Secretary of the Interior may direct, and he shall cause not more than twenty per centum of the net proceeds arising from such sales to be set apart and expended under his direction in the construction of schoolhouses or other public buildings or in improvements within the town sites in which such lots are located. The net proceeds derived from the sale of such lots and lands within the town sites as aforesaid, less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements, shall be credited to the Indians, as hereinafter provided.

SEC. 4. That the price of said lands entered as homesteads under the provisions of this act shall be fixed by appraisalment, as herein provided. The President shall appoint a commission to consist of three persons to classify, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections sixteen and thirty-six or other lands which may be selected in lieu thereof by the State of South Dakota, in each of said townships, said commission to be constituted as follows: One resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians. That within twenty days after their appointment the said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect, classify, and appraise, in one hundred and sixty acre tracts each, all of the remaining unallotted lands embraced within that portion of the reservation described in section one of this act. In making such classification and appraisalment said lands shall be divided into the following classes: First.

agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral and timber lands shall not be appraised: *Provided*, That timber lands may be classified without regard to acreage: *And provided further*, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians. That said commissioners shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection, classification and appraisement of said lands, and necessary expenses exclusive of subsistence to be approved by the Secretary of the Interior, such inspection, classification and appraisement to be completed within six months from the date of organization of said commission.

[461] SEC. 5. That said commission shall be governed by regulations prescribed by the Secretary of the Interior; and after the completion of the classification and appraisement of all of said lands the same shall be subject to the approval of the Secretary of the Interior.

SEC. 6. That the price of said lands disposed of under the homestead laws shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments, to be paid in two, three, four, five, and six years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be again subject to entry under the provisions of the homestead law at the appraised price thereof: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the appraised price, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this act.

SEC. 7. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums to which the said tribe may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization.

SEC. 8. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose, and in case any of said sections, or parts thereof, are lost to said State by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section one of this act, to locate other lands not otherwise appropriated, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement: *Provided*, That in any event not more than two sections shall be granted to the State in any one township, and lands must be selected in lieu of sections sixteen or thirty-six, or both, or any part thereof, within the township in which the loss occurs, except in any township where there may not be two sections of unallotted lands, in which event whatever is required to make two sections may be selected in any adjoining township.

[462] SEC. 9. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of not more than one hundred and twenty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section eight of this act. And there is hereby appropriated the further sum of thirty-five thousand dollars, or so much thereof as may be necessary, for the purpose of making the appraisement and classification provided for herein: *Provided*, That the latter appropriation, or any further appropriation hereafter made for the purpose of carrying out the provisions of this act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribe.

SEC. 10. That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, granted to the State of South Dakota, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

SEC. 11. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: *Provided*, That nothing in this act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act.

Approved, May 30, 1910.

Surplus Land Statutes Enacted 1904-1913

		Reservation Population*	Enroll- ment*
1. Red Lake, Minn.	2/20/04, c. 161, 33 Stat. 46	2,737	4,774
2. Rosebud, S.D.	4/23/04, c. 1484, 33 Stat. 254	7,181	9,400
3. Flathead, Mont.	4/23/04, c. 1495, 33 Stat. 302	2,825	5,296
4. Devils Lake, N.D.	4/27/04, c. 1620, 33 Stat. 319	1,748	1,629
5. Crow, Mont.	4/27/04, c. 1624, 33 Stat. 352	3,842	4,828
6. Grande Ronde, Ore.	4/28/04, c. 1820, 33 Stat. 567	**	**
7. Yakima, Wash.	12/21/04, c. 22, 33 Stat. 595	7,010	5,391
8. Wind River, Wyo.	3/3/05, c. 1452, 35 Stat. 458	4,062	4,594
9. Colville, Wash.	3/22/06, c. 1126, 34 Stat. 80	2,949	4,953
(Held not to terminate reservation status in <i>Seymour v. Superintendent</i> , 368 U.S. 351 (1962))			
10. Lower Brule, S.D.	4/21/06, c. 1645, 34 Stat. 124	581	296
11. Coeur D'Alene, Idaho	6/21/06, c. 3504, 34 Stat. 334	523	523
12. Blackfeet, Mont.	3/1/07, c. 2285, 34 Stat. 1035	6,220	10,467
13. Rosebud, S.D.	3/2/07, c. 2536, 34 Stat. 1230	—	—
14. Spokane, Wash.	5/29/08, c. 217, 35 Stat. 458	600	1,500
15. Cheyenne R., S.D.	5/29/08, c. 218, 35 Stat. 460	4,236	5,993
(Held not to terminate reservation status in <i>United States ex. rel. Condon v. Erickson</i> , 478 F.2d 684 (C.A. 8, 1973))			
16. St. Rock, N.D., S.D.	5/29/08, c. 218, 35 Stat. 460	4,712	7,131
17. Fort Peck, Mont.	5/30/08, c. 237, 35 Stat. 558	6,000	5,674
18. Pine Ridge, S.D.	5/27/10, c. 257, 36 Stat. 440	11,151	13,813
19. Rosebud, S.D.	5/30/10, c. 260, 36 Stat. 448	—	—
20. Ft. Berthold, N.D.	6/1/10, c. 264, 36 Stat. 455	2,677	3,709
(Held not to terminate reservation status in <i>City of New Town v. United States</i> , 454 F.2d 121 (C.A. 8, 1972))			
21. St. Rock, N.D., S.D.	2/14/13, c. 54, 37 Stat. 675	—	—
(Held not to terminate reservation status in <i>State v. Molash</i> , 86 S.D. 558, 199 N.W.2d 591 (1972))			

TOTALS: 69,054 89,971

* *Federal and State Indian Reservations*, pp. 131, 180, 189, 191, 193, 197-198, 316, 317-318, 330, 335, 337, 339, 343, 359, 387, 393-394, 415-416.

** Terminated. Act of August 13, 1954, c. 733, sec. 2, 68 Stat. 724 (35 U.S.C. 691 *et seq.*)

*** Held to terminate reservation status, *Rosebud Sioux Tribe v. Kneip*, 521 F.2d 87 (C.A. 8, 1975), certiorari granted May 24, 1976, No. 75-562 (44 LW 3661)

**** Held to terminate reservation status in *United States ex rel. Cook v. Parkinson*, 525 F.2d 120 (C.A. 8, 1975)

[Section 12 of the Act of March 2, 1889, c. 405, 25 Stat. 888]

SEC. 12. That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which said reservation is held of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress: *Provided, however*, That all lands adapted to agriculture, with or without irrigation, so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers, and shall be disposed of by the United States to actual and bona-fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians to whom such reservation belonged; and the same, with interest thereon at five per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians, or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward, delivered, free of charge, to the allottee entitled thereto.

[Sections 2 and 8 of the Indian Reorganization Act of June 18, 1934, c. 576, 48 Stat. 984 (25 U.S.C. 462, 468)]

Sec. 2. The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress.

Sec. 8. Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter.

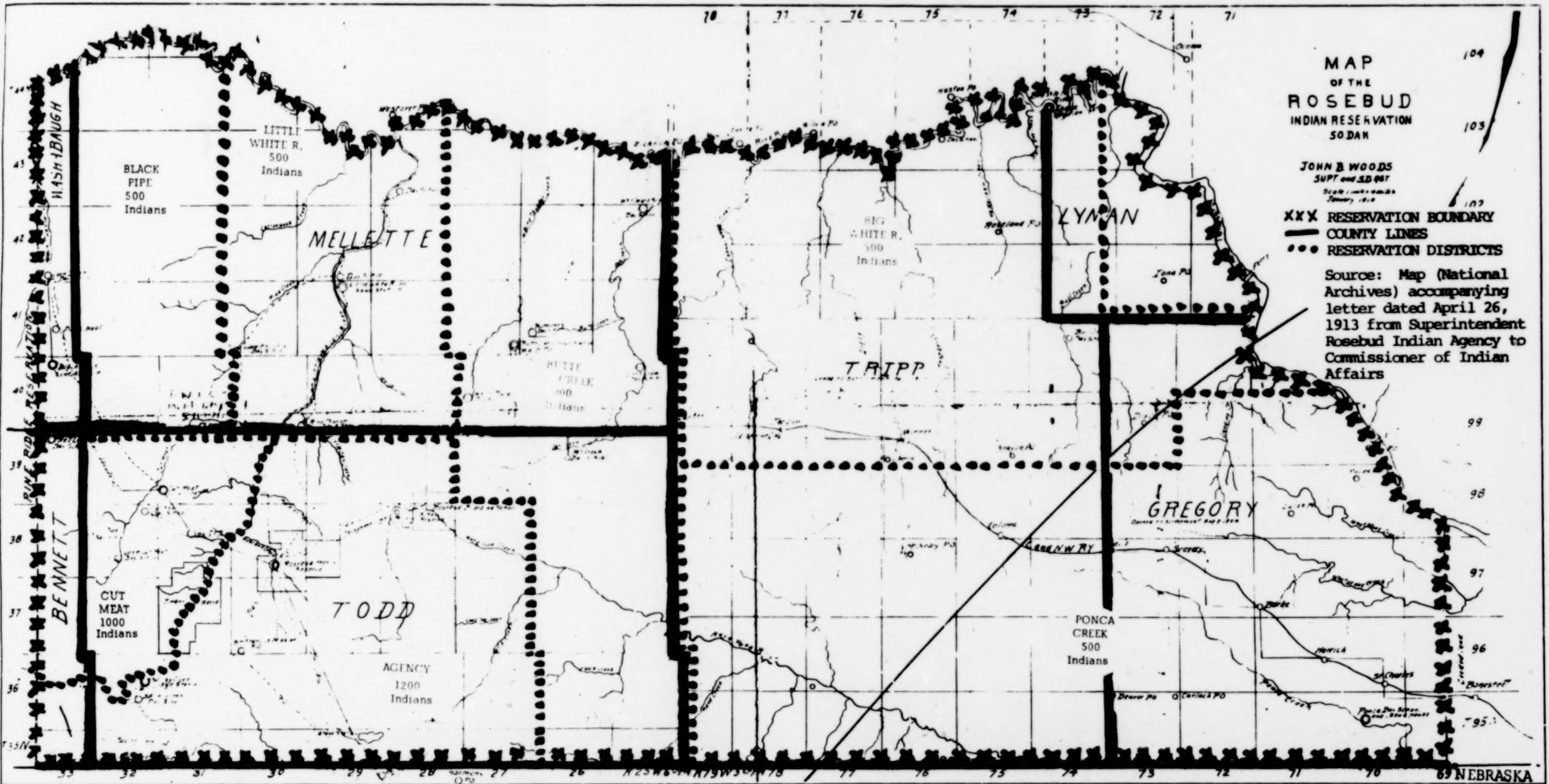
MAP OF THE ROSEBUD INDIAN RESERVATION S.D. DAN

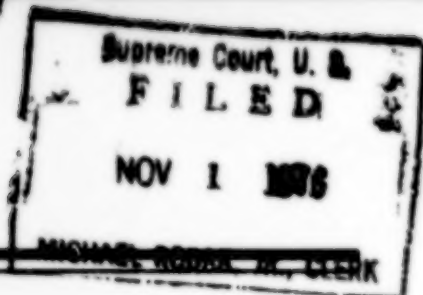
JOHN B. WOODS
SUPT and S.D. 987

Scale 1 inch equals
January 1913

- XXX RESERVATION BOUNDARY
- COUNTY LINES
- ... RESERVATION DISTRICTS

Source: Map (National Archives) accompanying letter dated April 26, 1913 from Superintendent Rosebud Indian Agency to Commissioner of Indian Affairs





IN THE
Supreme Court of the United States

October Term, 1976

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS

WILLIAM J. JANKLOW
Attorney General
State of South Dakota
Pierre, South Dakota 57501

WILLIAM F. DAY, JR.
Attorney for the Four Counties
Winner, South Dakota 57580

TOM D. TOBIN
Special Assistant Attorney General
Winner, South Dakota 57580

DAVID L. KNUDSON
Special Assistant Attorney General
Sioux Falls, South Dakota 57102

Attorneys for Respondents.

	Page
TABLE OF CONTENTS	
TABLE OF CITATIONS	iii
JURISDICTION	1
STATUTES INVOLVED	1
QUESTION PRESENTED	2
STATEMENT OF THE CASE	2
INTRODUCTION	8
SUMMARY OF ARGUMENT	9
ARGUMENT	16
 I. THE FACE OF THE ACTS, THEIR SURROUNDING CIRCUMSTANCES AND LEGISLATIVE HISTORY ALL POINT UNMISTAKABLY TO THE CONCLUSION THAT THE ROSEBUD LEGISLATION WAS INTENDED BY CONGRESS TO DISESTABLISH PORTIONS OF THE RESERVATION	16
 A. The General Allotment Act of 1887	16
B. DeCoteau v. District County Court, 420 U.S. 425 (1975)	22
C. The Act of March 2, 1889: The creation of the original Rosebud Reservation	29
D. The Rosebud Legislation	34
1. The Act of April 23, 1904: Gregory County	34
a. The 1901 negotiations	35
b. Congress rejects the certain-sum provision of the 1901 Agreement	46
c. The 1903 negotiations	52
d. Passage of the 1904 Act	56
e. The text of the 1904 Act	65
f. The 1905 Extension Statute	69
2. The Act of March 2, 1907: Tripp County	71

	Page
a. The 1907 Agreement is negotiated	72
b. Passage of the 1907 Act	76
c. The text of the 1907 Act	81
3. The Act of May 30, 1910: Mellette County	86
a. Initial attempts to open Mellette County	86
b. The 1909 negotiations	87
c. Passage of the 1910 Act	89
d. The text of the 1910 Act	93
4. The Todd County documents	99
II. THE SUBSEQUENT TREATMENT OF THE AREAS AFFECTED BY THE ROSEBUD LEGISLATIVE CONFIRMS THAT CONGRESS INTENDED TO DISESTABLISH THOSE PORTIONS OF THE ROSEBUD RESERVATION	105
A. Subsequent legislative, judicial and administrative treatment	105
B. The cartographic record	116
C. The Indian Reorganization Act	120
D. The definition of Indian country; 18 U.S.C. 1151	128
1. 18 U.S.C. 1151 (a): Jurisdiction within the limits of any Indian reservation	129
2. 18 U.S.C. 1151(c): Allotments on public domain ...	131
E. The treatment of the open area by the Tribe and the Bureau of Indian Affairs	135

	Page
III. A VIABLE REASON TO ALTER WHAT HAS BEEN, FOR OVER 65 YEARS, THE ESTABLISHED AND FUNCTIONAL INTERRELATIONSHIP OF THE ROSEBUD SIOUX TRIBE, THE FEDERAL GOVERNMENT AND THE STATE OF SOUTH DAKOTA DOES NOT EXIST	137
Conclusion	142
Appendix	

TABLE OF CITATIONS

Cases:

Ash Sheep Co. v. United States, 252 U.S. 159 (1920)	124, 125
Beardslee v. United States, 387 F.2d 280 (C.A. 8, 1967)	121, 132, 133, 134
Cook v. State, 215 N.W.2d 832 (S.D. 1974)	121
DeCoteau v. District County Court, 420 U.S. 425 (1975)	passim
Kills Plenty v. United States, 133 F.2d 292 (C.A. 8, 1943)	121, 130, 131, 132, 133
Lafferty v. State for Jameson 125 N.W. 2d 171 (S.D. 1963)	121
Lone Wolf v. Hitchcock, 187 U.S. 553 (1903)	11, 14, 51
Mattz v. Arnett, 412 U.S. 481 (1973)	59, 15, 22, 50, 69
Morton v. Ruiz, 415 U.S. 199 (1973)	13, 137, 140
Moe v. Confederated Salish and Kootenai Tribes, 44 U.S.L.W. 4535 (April 27, 1976)	4, 10
Perrin v. United States, 232 U.S. 478 (1914)	97
Rosebud Sioux Tribe v. Kneip, et al., 521 F.2d 87 (C.A. 8, 1975)	passim

	Page
Rosebud Sioux Tribe v. Kneip, et al., 375 F. Supp. 1065 (D.S.D. 1974)	passim
Seymour v. Superintendent, 368 U.S. 351 (1962)	2, 5, 9, 15, 50, 134
State v. Barnes, 137 N.W.2d 793 (S.D. 1965)	121
State v. Sauter, 215 N.W. 25 (S.D. 1925)	121
State ex rel. Hollow Horn Bear v. Jameson, 95 N.W.2d 181 (S.D. 1959)	121
State ex rel. Swift v. Erickson, 141 N.W.2d 1 (S.D. 1966)	121
State v. White Horse, 231 N.W. 2d 847 (S.D. 1975)	121, 136
United States v. Dick, 208 U.S. 340 (1908)	95
United States v. Frank Black Spotted Horse, 282 F. 349 (D.S.D. 1922)	131, 132, 133
United States v. LaPlant, 200 F. 92 (D.S.D. 1911)	121
United States v. Long Elk, 410 F. Supp. 1174 (D.S.D. 1976)	121
United States v. McGowan, 302 U.S. 535 (1938)	130
United States v. Mazurie, 419 U.S. 544 (1975)	97
United States v. Nice, 241 U.S. 591 (1916)	7, 133
United States v. Pelican, 232 U.S. 442 (1913)	131, 132, 134
Williams v. Lee, 358 U.S. 217 (1959)	141
Acts and Treaties:	
Act of April 29, 1868, 15 Stat. 635	29, 31-32

	Page
Act of February 8, 1887 (General Allotment Act or Dawes Act); 24 Stat. 389 (1887)	passim
Act of February 22, 1889, 25 Stat. 676	passim
Act of March 2, 1889, 25 Stat. 888	passim
Act of March 3, 1891, 26 Stat. 4041	passim
Act of April 23, 1904, 33 Stat. 254	passim
Act of February 7, 1905, 33 Stat. 700	69-71
Act of March 2, 1907, 34 Stat. 1230	passim
Act of May 20, 1910, 36 Stat. 448	passim
Act of January 11, 1915, 33 Stat. 792	111
Act of March 3, 1919, 40 Stat. 1320	113
18 U.S.C. Section 1151	14, 128-135
Act of June 18, 1934, 48 Stat. 984	14, 120-127
Miscellaneous Authorities:	
Cohen, <i>Handbook of Federal Indian Law</i> (U.N.M. Reprint)	50-51, 52
Land Decisions,	
40 L.D. 54 (1911)	110
40 L.D. 267 (1911)	111
44 L.D. 195 (1915)	112
44 L.D. 325 (1915)	113
47 L.D. 177 (1919)	114
Letters (unpublished),	
Letter from Acting Commissioner of Indian Affairs to W.W. Rankin, March 24, 1909	100
Letter from Roger Ernst, Asst. Secretary of the Interior to E. Y. Berry, May 28, 1959	115
Letter from Senator Gamble to the Secretary of the Interior, April 12, 1911	101
McLaughlin, <i>My Friend the Indian</i> , (1910)	39
Report of the Commissioner of Indian Affairs (1891)	16, 28

	Page
Report of Commissioner of Indian Affairs (1892)	16, 28
Report of Commissioner of Indian Affairs (1900)	109
Report of Commissioner of Indian Affairs (1910)	109
18 S.D.L. Rev. 85 (1973)	34
S. Exec. Doc. No. 51, 51st Cong., 1st Sess. (1890)	33
S. Exec. Doc. No. 66, 51st Cong., 1st Sess. (1890)	25
S. Rep. No. 661, 51st Cong., 1st Sess. (1890)	26
South Dakota Historical Collections, 45 (1910)	107-108
Reviser's Note, 18 U.S.C. § 1151	130, 131, 134

IN THE
Supreme Court of the United States

October Term, 1976

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS

Respondents adopt, for the purpose of this Brief, the material in the Brief for Petitioner under the heading of "OPINIONS BELOW."

JURISDICTION

The jurisdictional requisites are adequately set forth in the Brief for Petitioner with the exception that Petitioner neglected to mention the order of the court of appeals respecting a rehearing. A motion for leave to file an enlarged petition for rehearing en banc out of time was considered by the court of appeals and denied on September 16, 1975 (App. 32).

STATUTES INVOLVED

In addition to the Act of April 23, 1904, 33 Stat. 254 (App. 531), the Act of March 2, 1907, 34 Stat. 1230 (App. 869) and the Act of May 30, 1910, 36 Stat. 448 (App. 1044) cited by Petitioner, the crux of this case centers around certain

provisions of the General Allotment Act of February 8, 1887, 27 Stat. 388 (R. App. 104) construed by this Court in *DeCoteau v. District County Court*, 420 U.S. 425 (1975) because these same provisions are also contained in the Act of March 2, 1889, 25 Stat. 888 (R. App. 75) which created the original Rosebud Reservation.

QUESTION PRESENTED

Whether three surplus land statutes enacted pursuant to what was in essence Section 5 of the General Allotment Act were intended by Congress and understood by the members of the Rosebud Sioux Tribe to disestablish certain portions of the original Rosebud Reservation.

STATEMENT OF THE CASE

On July 30, 1972, the Rosebud Sioux Tribe filed this declaratory judgment action requesting the United States District Court for the District of South Dakota, Western Division, to declare that three surplus land statutes, enacted pursuant to what was in essence Section 5 of the General Allotment Act, were not intended by Congress to diminish the territory of the Rosebud Reservation from that originally defined in the Act of March 2, 1889, *supra*. The *Rosebud* suit was one of a series of cases, including *DeCoteau*, that had recently been initiated in an attempt to resurrect the original boundaries of several Indian reservations in the State of South Dakota. In *Rosebud*, as in *DeCoteau*, the focal point of attention was the General Allotment Act of 1887. According to Petitioner and the other original boundary advocates, this 1887 Act marked a dramatic departure in terms of a continued congressional policy that disestablished portions of Indian reservations. Brief for Plaintiff at 13, District Court. To capitalize on the result of *Seymour v. Superintendent*, 368 U.S. 351 (1962), Petitioner also utilized the uncertain-sum characteristic of the Rosebud Acts as the basis for several additional sophisticated arguments. However, even these arguments were still irrevocably intertwined with the General

Allotment Act argument.

Accordingly, the issue as presented to the district court was simply one of congressional intent — whether the three acts passed after the General Allotment Act represented a congressional determination to disestablish any portion of the original Rosebud Reservation. Then, as now, both parties conceded that any congressional determination remained the same in all three Acts. The *Rosebud* record made clear that the effect of the first Rosebud Act had to be the intended effect of all three.

The initial district court brief for Petitioner was filed before the *DeCoteau* decision. It only summarily referred to a few isolated excerpts of legislative history. Respondents prepared and forwarded to the district court the complete legislative history of all three Rosebud Acts, as well as other documentation from which the surrounding circumstances could well be established. In addition, approximately two hundred pages of briefs and appendices were eventually submitted.

Nineteen months later, on February 7, 1974, the district court issued a 53-page memorandum opinion, setting forth at length the language, legislative history and the surrounding circumstances of the three Acts in support of its decision. The materials all pointed unmistakably to the court's conclusion that the three Rosebud Acts were intended by Congress to have an effect on certain portions of the original reservation similar to that later found by this Court in *DeCoteau*. The reservation nature of the portions of the original Rosebud Reservation affected by the three surplus land statutes, namely, parts of the counties of Gregory and Lyman, South Dakota (1904 Act), the entire county of Tripp, South Dakota (1907 Act), and the county of Mellette, South Dakota (1910 Act) was effectively disestablished. See Map, *infra* at 34. The Court further noted that the area unaffected by any of the acts, presently known as Todd County, South Dakota, remained intact and that the present boundaries of the Rosebud Reservation encompass only Todd County.

The court found that as the result of nearly a decade of legislation, the Tribe and the Government had spoken clearly. They had agreed to a process that carved out a diminished reservation. In addition, scattered allotments were left in the counties in question. This, too, was a fact situation later specifically recognized by this Court in *DeCoteau*. *DeCoteau*, *supra* at 447.

Clearly distinguishable from this fact situation is the untenable position rejected in *Moe v. Confederated Salish and Kootenai Tribes*, 44 U.S. L.W. 4535 (April 27, 1976), that allotment *per se* pursuant to Section 6 of the General Allotment Act eventually disestablished reservations.

Both in *DeCoteau* and *Rosebud*, Section 5 of the General Allotment Act served as the basis for surplus land cessions or sales approved and enacted in special statutes by Congress. When the language, legislative history and surrounding circumstances of one of these special statutes enacted pursuant to Section 5 of the General Allotment Act, make clear that Congress intended to disestablish a distinct portion of the reservation affected, then this Court in *DeCoteau* has held:

exclusive tribal and federal jurisdiction is limited to the retained allotments. 18 U.S.C. § 1151(c). See, *United States v. Pelican*, 232 U.S. 442. *DeCoteau*, *supra* at 446-447.

Although decided before *DeCoteau*, the decision of the district court reached this same conclusion.

The decision of the district court was in conformity with over sixty-five years of state and federal precedent. As in *DeCoteau*, the decision of the district court did not alter the status quo. *DeCoteau*, *supra* at 449. As a finding of fact, the district court noted:

Certainly this is the treatment that has been accorded those counties from the time of the acts' passage on. There is no dispute but that the State of South Dakota has treated the counties of Mellette, Tripp, Gregory and what was at that time Lyman county, as portions of the state over which

the State of South Dakota can exercise jurisdiction since the passage of those acts. Pet. App. 109.¹

Before this Court, Petitioner has now attempted to raise a new issue that was not presented to the district court in any of the pleadings or in any of the briefs, the alleged "unilateral" nature of the three acts in question. This aspect of Petitioner's argument first surfaced, and even then rather indirectly, on March 13, 1974, when Petitioner appealed the decision of the district court to the Eighth Circuit Court of Appeals.

In the court of appeals, approximately six hundred pages of briefs and appendices were again filed by counsel for Petitioner and by the United States as *amicus curiae* in support of the arguments of the Rosebud Sioux Tribe. At oral argument on September 12, 1974, the panel below indicated that it was reluctant to decide the issue until this Court decided the then pending *DeCoteau* case. As a result, no further action was taken on the issue until March 12, 1975 when the court of appeals requested a supplementary brief from each of the parties directed to the applicability and effect of the *DeCoteau* decision. App. 30. An additional eighty-five pages of supplementary briefs were then filed by Petitioner, the United States and Respondents. In the supplemental briefs, all of the major arguments and types of documentation presented in *DeCoteau* were thoroughly examined in the context of the *Rosebud* materials.

On July 16, 1975, the court of appeals issued a 62-page opinion which analyzed all of these arguments. After considering the language, the legislative history and surrounding circumstances of the three Acts in question in light of *Seymour v. Superintendent*, 368 U.S. 351 (1962), *Mattz v. Arnett*, 412 U.S. 481 (1973), and most recently *DeCoteau*, *supra*, the court of appeals found it:

1. Unless otherwise stated, all emphasis is supplied. The documents cited as R. App. were inadvertently omitted in the single appendix. They are included in the appendix prepared by Respondents which was submitted with this brief.

clear beyond reasonable question that the Acts were passed with the intent of doing away with the Reservation in those portions affected . . . The problems before the Congress at the turn of the century with respect to the western lands permitted no easy solutions. The choices were difficult but they were made by the representatives of the people and it is not our function to fashion a wiser course under the guise of interpretation. Pet. App. 60-61.

It was again noted that the decision of the court only maintained the status quo. Since the passage of the Acts in question, all parties had, as in *DeCoteau*, recognized the jurisdiction of the state therein. Pet. App. 3-4.

After the decision was announced Petitioner initially indicated to Respondents that a petition for rehearing en banc would not be filed. On July 31, 1975, the time for filing such a petition expired. However, on September 3, 1975, the court of appeals received a 110-page document from the Land and Natural Resources Division of the Department of Justice that was to serve, among other purposes, as an enlarged brief for the United States as *Amicus Curiae* in support of Petitioner's request for rehearing en banc. Six days later, on September 9, 1975, the court of appeals received the motion of Petitioner for leave to file the accompanying enlarged petition for a rehearing en banc out of time. By order of the court dated September 16, 1975, the motion was denied. App. 32.

On October 11, 1975, a petition for certiorari was filed with this Court. On May 24, 1976, this Court granted the petition.

The issue now presented to this Court was before the district court and the court of appeals for consideration for over three years. In addition to the complete legislative history submitted to the district court by Respondents, fourteen separate briefs, a total of 560 pages, and over 640 pages of appendices, were presented in support of the arguments of the respective parties. Both courts unequivocally found the position of Petitioner and the United States to be untenable and contrary to the language, legislative history and surrounding circumstances of the Acts in question.

The majority of the affirmative arguments of Petitioner and the Government, although sophisticated, were variously treated and described by the courts below as:

. . . not in point . . . misapprehends the applicable criteria . . . inconclusive and unpersuasive . . . cannot accept . . . nowhere do we find, in the legislative history or materials from the period, any indication in substantial support . . . we cannot ignore the legislative history . . . the argument made will not withstand analysis in light of the realities of the situation confronting the Congress at the time . . . the record is barren of any disclosed intention thereby to preserve intact the area of the original reservation and its boundaries. Such an intention is utterly foreign to the entire tenor of the contemporary materials before us . . . the argument stems from a misinterpretation of legislative history . . . Pet. App. 6, 8 n. 8, 15 n. 21, 26, 30, 31, 33, 42, 54, 83.

In other instances, the courts below simply noted "no explanation" whatsoever was even offered by the Petitioner or the United States on crucial points such as why, at the end of the decade of the *Rosebud* legislation, did the principals responsible for the three *Rosebud* Acts succinctly describe the *Rosebud* Reservation in the Congressional Record, the Senate and House Reports and other sources as "a diminished reservation," "successively reduced to less than one-fourth of its original area" by "three cessions" in "the past eight years" or "openings within the past few years" so that as *the* *Rosebud* Reservation it contained "one million acres of land" and as *the* *Rosebud* Reservation it was "reduced to the limits of Todd County," "embraced in Todd County" or "lying wholly within the boundaries of Todd County," if the decade of *Rosebud* legislation was not intended by Congress to alter the boundaries of the original *Rosebud* Reservation which contained over three million acres of land and encompassed most of five separate counties.

The position of Petitioner before this Court remains the same. The arguments of Petitioner and *amici curiae*, though more varied and sophisticated, are still "utterly foreign to the entire tenure of the *Rosebud* documents." Pet. App. 54. No

new documentation of substance in support of these arguments has been presented. No one has offered this Court the alternative constructions to the references in the Rosebud documents that effectively undermine the theory upon which the position of Petitioner is founded. Strident criticism now forms the primary basis for Petitioner's present assertions. According to Petitioner and *amici curiae*, for some unstated reason, even with the guidance of *DeCoteau* and after having thoroughly examined the complete legislative history of all three Rosebud Acts and over twelve hundred pages of argument and other documentation for over three years, both courts below were simply incapable of accurately ascertaining the intent of Congress and the understanding of the Rosebud Sioux Tribe. On their face, the opinions of both courts erode the merits of this assertion.

INTRODUCTION

The parameters within which issues related to reservation disestablishment are resolved have been firmly established. *DeCoteau*, *supra* at 444-45.

By the very nature of the case presented, as in *DeCoteau*, it is impractical if not impossible to present all of the relevant documentation in the Rosebud Acts. For this reason, Counsel for Respondents have adopted the same basic format for this Brief that they utilized in their presentation of the *DeCoteau* documents to this Court in 1975. Under the first subheading of argument, Respondents have initially addressed the congressional philosophy prevalent at the time of the General Allotment Act and the Sisseton-Wahpeton Act of 1891 to re-establish the tenor of the era. Next, in their proper historical sequence the Rosebud documents are set forth at length, commencing with the Act of 1889, which created the original Rosebud Reservation, and ending with the unsuccessful attempt to open Todd County. Then, subsequent congressional enactments, reports and documents along with expressions of the Department of the Interior, the Tribe and South Dakota historians are examined. Finally, the substan-

tive arguments advanced by Petitioner and *amici* are analyzed from this historical perspective.

At the outset if it should be noted that Petitioner and *amici* assert that affirmation of the decision below would "destroy the reservation status" of untold portions of other reservations. The court below, in recognition of one of the most fundamental principals of federal Indian law, stated that "obviously separate treaties and agreements with separate tribes must be separately construed." P. App. 112. Under the guidance of *Seymour*, *Matz* and *DeCoteau*, Congressional intent and tribal understanding will continue to be the controlling factors. In this light there cannot be a predetermined result.

Due to the vastness of the Congressional Record concerning the Rosebud Reservation, Respondents have selected representative passages which accurately convey the tenor and direction of the discussions. Respondents submit that a thorough review of all the legislative history will confirm the appropriateness of the passages selected.

After describing the task of construing surplus land statutes as a "narrow one," this Court recognized that "we cannot remake history." *DeCoteau* at 449. For a number of reasons, while neither condemning nor condoning the actions and statements contained in this history, Respondents agree and have reported the facts as accurately as possible.

SUMMARY OF ARGUMENT

This Court has established that the key inquiry in determining whether or not a given statute has disestablished a reservation or portion thereof is congressional intent. In this regard, one looks to the text of the act itself, its legislative history and the surrounding circumstances. It is Respondent's contention that the Rosebud legislation fits squarely within the same historical circumstances deemed to be determinative by this Court in *DeCoteau v. District County Court*, 420 U.S. 425 (1975).

In *DeCoteau*, Congress had passed an 1891 surplus land statute pursuant to Section 5 of the General Allotment Act of 1887, which disestablished the Lake Traverse Reservation. The policy of the General Allotment Act, as established in Section 5, sought to achieve two objectives: first, to promote Indian welfare by allotting portions of reservation lands, formerly held by the tribe in common to individual tribal members, and second to dispose of all surplus, unallotted reservation lands in order to make such surplus lands available to settlers under the homestead laws. These two objectives are the "familiar forces" noted by this Court in *DeCoteau*, at 432.

The Rosebud Indian Reservation was established when the Great Sioux Reservation was divided up into six separate reservations and the bulk of the original Great Sioux Reservation opened to homesteading by the act of March 2, 1889. In accordance with the General Allotment Act, Section 12 of the 1889 Act provided for further negotiations with the Sioux Indians for the further disposition and sale of portions of the reservations established by the 1889 act. The text of Section 12 is identical with Section 5 of the General Allotment Act. Portions of the original Rosebud Reservation were opened to settlement and disestablished by three surplus land statutes passed in 1904, 1907 and 1910. Each of these Acts was passed in pursuit of the policy established by Section 5 of the General Allotment Act and reiterated in Section 12 of the 1889 Act.

This fact situation is clearly distinguishable from untenable position rejected in *Moe v. Confederated Salish and Kootenai Tribes*, *supra*, that allotment *per se* pursuant to Section 6 of the General Allotment Act eventually disestablished reservations.

Just as the 1889 Act disestablished large portions of the Great Sioux Reservation and the 1891 Sisseton-Wahpeton Act disestablished all of that reservation, the three Rosebud Acts disestablished various portions of the Rosebud Reservation. The courts below correctly interpreted each of these

Acts and found that for all three Acts, the text, the legislative history and the surrounding circumstances all made clear Congress' intent to disestablish portions of the Rosebud Reservation. Respondents devote a large portion of their brief to a careful and comprehensive discussion of the legislative history, surrounding circumstances and the text of each of these three Acts.

In 1901, the United States and the Rosebud Sioux Tribe negotiated a cession agreement providing that the Tribe would "cede, surrender, grant and convey" for a certain-sum a portion of its reservation, an agreement virtually identical to that in *DeCoteau*. Before Congress ratified this agreement, it amended it for fiscal reasons to provide that the method of payment would be an uncertain-sum with the exact consideration dependent upon sales of the surplus lands to settlers. Although this arrangement was familiar to the Rosebud Sioux Tribe because of its inclusion in the 1889 Great Sioux Reservation Act, the amended agreement received the formal approval of only a majority of the adult male members when it was presented to them in 1903, instead of the three-fourths required by an earlier treaty. Acting upon this Court's recent reiteration of congressional authority in *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903), which involved a similar reservation fact situation, Congress ratified the agreement as amended in 1904. The 1904 Act affected Gregory County, South Dakota.

The 1907 Act, affecting Tripp County, was based upon another negotiated cession, agreement like that in *DeCoteau* except for its use of the uncertain-sum method of payment. A majority of the Tribe again formally approved the Agreement. Rather than repeating the negotiated agreement verbatim, this statute merely contained the substance of the agreement. Thus the operative language became "sell and dispose of all that portion of the Rosebud Indian Reservation" rather than the previous cession terminology.

The same language and format was used in the 1910 Mellette County Act. Although no attempt was made at hav-

ing a majority sign a formal cession agreement, the tribe was consulted and reportedly approved the measure by a large majority. As a result a formal document was not prepared, as such a formality was no longer considered to be necessary by Congress.

In all cases, Congress' intent to disestablish a portion of the Rosebud Reservation by each Act is overwhelming. The Congressional debates and committee reports make this eminently clear. These sources, and the other relevant materials, are replete with references to each of the Acts as reducing the size and changing the shape of the reservation, as a cession and surrender of a portion of the reservation, as extinguishing a portion of the reservation, and as leaving a diminished reservation and restoring lands to the public domain. The Sisseton-Wahpeton Act in *DeCoteau* and the 1889 Great Sioux Act were referred to as precedents in that these Acts and the three Rosebud Acts all extinguished reservation status and returned lands to the public domain.

Further there is no question but that these same documents also make clear the Tribe understood the Rosebud Acts as having disestablished portions of their reservation. Moreover, the tribal councils which took place in 1911 concerning another proposal to further reduce the Rosebud Reservation are conclusive evidence of the tribe's understanding as to the three earlier Acts. One cannot read the transcripts of the meetings regarding the proposed opening of Todd County and not be persuaded that the earlier three Acts, as far as the tribal members were concerned, had disestablished portions of the reservation.

Petitioner and the various *amici*, being unable to rely on the legislative history or the historical circumstances of the Acts for support, have developed a series of technical arguments, derived in the abstract by counsel, with no reference to the actual legislative history. Petitioner and *amici* then attempt to tie some of these arguments to various provisions of the Acts, such as the school lands provision, the allotment provisions, the prohibition of liquor in Mellette

County, and the reservation of timber and other lands for agency, religious, and educational purposes. With regard to each of these provisions, Petitioner and *amici* have merely given their interpretation as to how these provisions would indicate a Congressional intent not to disestablish the Rosebud Reservation. However, Petitioner and *amici* never refer to the Congressional debates or the committee reports, instead merely giving their own opinions and not what Congress itself intended regarding these particular provisions. In contrast, Respondents have, in all cases, scrupulously gone to the original sources, the Congressional debates and the committee reports, in order to ascertain what Congress' intent was in including these various provisions in the various Rosebud Acts. In all cases, the legislative history makes clear that Congress' inclusion of these provisions was totally consistent with, and sometimes directly predicated upon, disestablishment of the portions of the reservation affected.

Petitioner and *amici* also attempt to show that the later administrative and legislative treatment of the area affected by the three Rosebud Acts is inconsistent with disestablishment of portions of the reservation. Much to the contrary, the complete legislative record is replete with statutory references to the "former Rosebud Reservation" or to areas "formerly a part of the Rosebud Reservation." Additionally, the area in question has consistently been treated as not a portion of the reservation by the Department of Interior, Bureau of Indian Affairs, and the Tribe itself. The BIA and the Tribe have consistently refused to grant benefits and privileges to tribal members living on non-trust land in the areas affected by the Rosebud Acts, a situation now rectified by *Morton v. Ruiz*, 415 U.S. 199 (1973). Such treatment provides an additional source with which to confirm Congress' intent to disestablish portions of the Rosebud Reservation by passage of the three Rosebud Acts.

The cartographic treatment of the area affected by the three Rosebud Acts is identical to the treatment of the former Sisseton-Wahpeton Reservation. The Court in *DeCoteau*

made note of this cartographic history and again in Rosebud it is another source confirming Congress' intent to disestablish the Rosebud Reservation.

The Indian Reorganization Act, from which Petitioner and amici have also extracted arguments, has little relevance to a determination of the Congressional intent embodied in the 1904, 1907 and 1910 Rosebud Acts. When viewed in their entirety, however, the Indian Reorganization Act and the relevant orders and opinions issued pursuant to the Act support the position of Respondents.

Finally, a discussion of 18 U.S.C. 1151 makes clear that, in passing that statute relative to criminal jurisdiction in Indian country, Congress in the 1940's understood that the three Rosebud Acts had disestablished the Rosebud Reservation in the areas affected by those Acts. In enacting 18 U.S.C. 1151(a), Congress relied on cases arising out of Todd County, the Rosebud Reservation. The consistent holdings of other cases was that the areas opened by the Rosebud Acts were outside the boundaries of the reservation. Congress enacted 1151(c) to cover this situation. All of the cases make clear that only Todd County in 1948 was within the boundaries of the Rosebud Reservation. Subsequent case law has been in accord with this result. Thus, as in *DeCoteau*, the decision below did not alter the status quo.

Petitioner alleges that the Rosebud Acts were not cessions and makes much of the fact that the purchase of the surplus and unallotted lands utilized the method of an uncertain-sum in trust. In making his "cession" argument, Petitioner ignores this Court's decision in *Lone Wolf v. Hitchcock*, is clearly pointed out in the congressional debates in all three Rosebud Acts. *Lone Wolf* confirmed Congress' understanding that tribal consent was not necessary in order to dispose of surplus lands. Nevertheless, the Tribe approved by a written majority vote, although less than a three-quarters vote, the agreements to sell surplus and unallotted lands embodied in the 1904 and 1907 acts. Congress also consulted the Tribe with regard to the 1910 Act.

Petitioner's attempt to distinguish *Rosebud* from *DeCoteau* on the basis of the uncertain-sum method is similarly untenable. The 1889 Act also utilized an uncertain-sum as the method of payment for the lands acquired by the government pursuant to the Act to divide up the Great Sioux Reservation. There is no question that that Act resulted in the disestablishment of the Great Sioux Reservation. Petitioner attempts to argue that the use of the uncertain-sum method was a radical change in Federal Indian policy. Again, Petitioner has merely made an assertion and has failed to look to the congressional debates to determine the validity of that assertion. The Rosebud debates in 1901 through 1904 make clear the fact that Congress saw the uncertain-sum approach as being purely a fiscal and economic concern. It was never intended that the difference in method of payment would have any substantive effect on the disestablishment policy established in Section 5 of the General Allotment Act. The debates clearly establish that Congress was looking for a method of avoiding large direct payments by the Treasury and providing land at a reasonable price to settlers. The uncertain-sum method was particularly appropriate to solve Congress' concerns. The switch from the certain-sum back to the uncertain-sum was not indicative of a change in fundamental federal Indian policy. Section 5 of the General Allotment Act and its familiar forces continue to be the major thrust of federal Indian policy.

The Rosebud record itself refutes most of the arguments of Petitioner and amici, because they are not based upon the language, legislative history and surrounding circumstances of the Rosebud Acts. In addition, Petitioner's remaining arguments were equally applicable in *DeCoteau* and were rejected there.

In *Seymour, Mattz* and *DeCoteau*, the Court has clearly established the rule that congressional intent is to be followed in determining whether a given act opening surplus and unallotted lands to settlement had the effect of disestablishing the area affected by the act from any Indian reservation. The

search for that intent lies primarily in the text of the act and in the legislative history and circumstances surrounding the act. In Rosebud, as in *DeCoteau*, all three factors are clear and unambiguous. Congress intended to disestablish portions of the Rosebud Reservation by each of the three Rosebud Acts. Petitioner's attempts to find artificial, rigid and technical reasons for disallowing this congressional intent are inappropriate. The search for congressional intent must lie with the acts themselves, the committee reports, the legislative history, and the understanding of the tribe itself. Arbitrary rules proposed by Petitioner do not assist the Court in determining Congressional intent. Rather a detailed review of the legislative history of the acts is necessary and this is what Respondents have provided.

ARGUMENT

I

THE FACE OF THE ACTS, THEIR SURROUNDING CIRCUMSTANCES AND LEGISLATIVE HISTORY ALL POINT UNMISTAKABLY TO THE CONCLUSION THAT THE ROSEBUD LEGISLATION WAS INTENDED BY CONGRESS TO DISESTABLISH PORTIONS OF THE ORIGINAL RESERVATION.

If the policy of allotting lands is conceded to be wise, then it should be applied at an early day to all alike wherever the circumstances will warrant. If we have settled upon the breaking up of the tribal relations, the extinguishment of the Indian titles to surplus lands, and the restoration of the unneeded surplus to the *public domain*, let it be done thoroughly. If reservations have proven to be inadequate for the purposes for which they were designed, have shown themselves a hindrance to the progress of the Indian as well as an obstruction in the pathways of civilization, let the reservations, as speedily as wisdom dictates, be utterly destroyed and entirely swept away. Report of Commissioner of Indian Affairs 8, (1891).

A. The General Allotment Act of 1887.

The passage of the General Allotment Act in 1887 did not constitute a fundamental change in federal Indian policy.

Prior to 1887, it was the fundamental precept of federal Indian land policy that the ratification of a cession agreement would extinguish the Tribe's claim or title to the affected area. If the ceded area or area to be disestablished included only a portion of the reservation, the reservation boundaries would be necessarily diminished to include only the reduced area of the remaining reservation. If an entire reservation was to be ceded or disestablished, the boundaries were also necessarily disestablished, and the tribes involved usually were required to remove to another reservation. In both instances, the area was automatically restored to the public domain and "opened" to homesteading. The consideration was usually a certain-sum direct per capita cash payment to the tribe or individual members thereof.

After passage of the General Allotment Act, Congress continued to disestablish Indian reservations by tailoring cession agreements to conform with the guidelines set forth in Section 5 of the General Allotment Act, *DeCoteau, supra*. In fact, disestablishment after passage of this Act took place at a much more rapid pace than had theretofore been possible. In two respects, however, the post 1887 legislation differed materially from the earlier legislation. Most significantly, individual members of the tribes were assured under the General Allotment Act of individual acreages in the form of allotments. These individual allotments were made pursuant to Section 5 of the General Allotment Act. The land which remained after allotment was referred to as "surplus" or "surplus and unallotted" land. Section 5 of the General Allotment Act made provision for the eventual disposal of this surplus land. The term "surplus land statute" was used to describe the entire process of disposing of this land subsequent to allotment.

Secondly, those primarily responsible for the passage of the General Allotment Act professed a sincere belief that an individual member of a tribe who had received an allotment, as well as the United States, would be better off after a surplus land statute was enacted and the surplus lands opened to

settlement. The allotted member of the tribe would be exposed to "civilization," and this exposure was deemed a necessary step toward the status of citizenship. Sale of the surplus land would create a fund which would serve as a source of income for the allottee until that status could be fully obtained. Moreover, the United States would, at the same time be making available for cultivation vast tracts of land that had theretofore been lying idle. The allottee and the homesteader could cultivate the land side by side, and, as a result, the entire country would benefit. These were the "familiar forces" of Section 5 of the General Allotment Act referred to in *DeCoteau* at 431.

In 1892, the Commissioner of Indian Affairs again addressed these forces at length in terms of letting "the reservations, as speedily as wisdom dictates, be utterly destroyed and entirely swept away." Report of the Commissioner of Indian Affairs, 136 (1892). As a graphic illustration of the "familiar forces," the Report stated that under Section 5 of the General Allotment Act "during the past three years more than 24,000,000 acres of Indian land had been restored to the public domain." Report of the Commissioner of Indian Affairs, 136 (1892). In retrospect, both the goals of this aspect of the General Allotment Act and some of the motives behind it may be questionable, but at the time they were wholeheartedly accepted in good faith.

An example of a surplus land statute enacted pursuant to Section 5 of the General Allotment Act assists in explaining the operation and effect of such a statute. Assume a certain cession or sale for the entire eastern half of a reservation was proposed in 1888, but only a certain percentage of the members of the tribe had as of that date received an allotment. If this proposal nevertheless met with the approval of the Commissioner of Indian Affairs, he would write the Secretary of the Interior and cite Section 5 of the General Allotment Act which provided, in part:

And provided further, That at any time after lands have been allotted to all the Indians of any tribe as

herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to *negotiate* with such Indian tribe for the *purchase and release* by said tribe, in conformity with the treaty or statute under which such reservation is held, *of such portions of its reservation* not allotted as such tribe shall, from time to time, consent to *sell*. . . . R. App. 107.

This section would allow the United States to negotiate for the release of "such portions" of the reservation as were not allotted, regardless of the fact that only a certain percentage of allotments had yet been made, and these were scattered throughout the entire reservation. If the Secretary concurred with the proposal, he would appoint either one or several commissioners and ask that the Commissioner of Indian Affairs submit a "Draught of Instruction" for his approval. After approval, the instructions would be forwarded to the commissioners. In most instances the information contained therein was of a very general nature.

The Commission would go to the reservation, negotiate with the tribe for the surplus lands and draw up a document for the approval of the Tribe containing the price per acre and such other specific provisions as the United States and the tribe might wish to resolve. In some cases the "cession" or "sale" terminology would appear in the text of the document, and in others it would not. In some cases, the "public domain" and "diminished reservation" terminology would be referred to repeatedly in the text of the document, and in others it would not. In all cases, the document would describe or separate the surplus area by some boundary marker or other survey from that portion of the reservation unaffected, i.e., the diminished reservation.

The only restriction in Section 5 on the method of payment for the "purchase and release" of "such portions" of the "reservation not allotted" that the Tribes were to "sell" was simply:

Such terms and conditions as shall be considered

just and equitable between the United States and said tribe of Indians. R. App. 108.

Equally broad language in Section 5 governed the terms of the eventual disposal of the surplus portions of the reservation to the bona-fide settlers — "such terms as Congress shall prescribe." R. App. 108. Thus, congressional discretion was virtually unlimited.

In exercising this broad discretion, the United States would ordinarily agree to purchase the surplus land directly from the Tribe for a certain-sum. Significantly, however, even as early as 1888 the United States sometimes elected to use the uncertain-sum method of payment. In all instances, however, the eventual disposition of the proceeds for the land was governed by Section 5:

Purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians to whom such reservation belonged. R. App. 108-09.

The entire document would not be effective until ratified by Congress, again pursuant to the requirements of Section 5 of the General Allotment Act. In Washington, the document would be amended by the Congress to provide that the surplus lands to be sold or released by the Tribe would be held by the United States as trustee for the sole purpose of securing homes to actual settlers if it was adaptable for agricultural purposes again pursuant to the requirement of Section 5 of the General Allotment Act.

The surplus portion of the reservation would thereby become essentially a part of the public domain when opened to homesteading upon amendment and ratification by Congress and Proclamation by the President. Any other portion of the reservation would remain intact and be referred to as the diminished reservation, or the remaining reserve, or just the reservation. As for those individual members of the tribe whose allotments were now to be situated in the newly created public domain, they were generally given the option to remain so situated or to relinquish their allotment and

remove to the diminished reservation and reselect therein. At a later date, this whole process could be repeated one or more times on the same reservation. The original reservation would be repeatedly reduced in size, with each surplus area restored to the public domain and opened to actual settlers. Again, many members of the Tribe would elect to remain situated in the "former" reservation areas.

There would be no question in this instance as to the effect of the document as ratified on the boundaries of the original reservation, even if construed in an historical vacuum. With each opening, there would necessarily be some delineation of the area opened from the area remaining within the diminished reservation. Most often this delineation would appear in the act as some type of metes and bounds description because during this period in most instances the territory or the states involved had not yet been surveyed into distinct county subdivisions, or the surplus area did not coincide with the county boundaries. When an act provided for the opening of all of the unallotted surplus land of the reservation, however, the effect Congress intended was not so apparent. Initially, no one questioned the effect of surplus land statutes on the boundaries of any reservation. To those at all familiar with the overall policy of the United States, the answer would have been an almost obvious corollary of the act itself. After all, these were the familiar forces of the era. The lapse of time, however, and the absence of any singular concrete reference from which to readily obtain a proper historical perspective, together with the inconsistencies and policy reversals which characterized the whole arena of Indian affairs in later decades, understandably clouded the issue — especially in the aforementioned case of where the entire reservation was opened to settlement by such a statute. This was precisely the fact situation presented in *DeCoteau*.

The many parallels between the Sisseton-Wahpeton Act and the Rosebud Acts makes an examination of *DeCoteau* of critical importance.

B. *DeCoteau v. District County Court*, 420 U.S. 425 (1975).²

In 1887, the General Allotment Act (or Dawes Act) was enacted in an attempt to reconcile the Government's responsibility for the Indians' welfare with the desire of non-Indians to settle upon reservation lands. The Act empowered the President to allot portions of reservation land to tribal members and, with tribal consent, to sell the surplus lands to white settlers, with the proceeds of these sales being dedicated to the Indians' benefit.

Against this background, a series of negotiations took place in 1889 with the objective of opening the Lake Traverse Reservation to settlement. *DeCoteau*, *supra* at 432-433.

References to Section 5 of the General Allotment Act permeated the Sisseton-Wahpeton documents. Prior to *DeCoteau*, the question of reservation disestablishment pursuant to Section 5 of the General Allotment Act had not been specifically discussed in any court opinion. Moreover, the 1891 Sisseton-Wahpeton Act did not contain any express language of termination, unlike the rather atypical examples set forth in the Note in *Mattz v. Arnett*, 412 U.S. 504, N. 22 (1973). In addition, as this Court noted, the members of the Sisseton-Wahpeton Tribe had elected to sell all of the unallotted surplus lands. In this situation, there was no "carved out . . . diminished reservation." Hence, there were no direct references to what would remain after the ratification of the agreement by either the United States or the members of the Sisseton-Wahpeton Sioux Tribe. Such references would have been a key probative source of both congressional intent and tribal understanding. In short, the precise effect of the 1891 Act on the Lake Traverse Reservation was not spelled out in the *DeCoteau* documents. No mention was made of the boundaries of the Lake Traverse Reservation. Thus, in order to accurately ascertain the intent of Congress, this Court had to establish the proper historical perspective from which to view the events in question. An overall analysis of the significance

2. The summary of *DeCoteau* that follows is only an overview of the fact situation. A review of the briefs submitted therein sheds considerable light on various aspects of the issue presented in the instant case.

of Section 5 of the General Allotment Act as well as an exhaustive review of the legislative history and surrounding circumstances of the 1891 Act provided this perspective.

The *DeCoteau* opinion makes clear that the fact situation therein was by no means unusual. Throughout the western United States many local communities were requesting that surplus reservation lands be made immediately available for farmers, merchants and railroad development. Most of the members of the tribes had already received their allotments. To act with expediency would be to act in the best interests of all concerned.

In *DeCoteau*, the initial request from the local area was for "the opening of the reservation." Letter, *DeCoteau*, *supra* at 431, N.8. In response thereto, the Commissioner of Indian Affairs forwarded the request to the Secretary of Interior for preliminary approval. Letter, *DeCoteau*, *supra* at 434. The Commissioner specifically directed the attention of the Secretary of Interior to "the 5th section of the Act of February 8, 1887." Letter, *DeCoteau*, *supra* at 434. Shortly thereafter, the Commissioner submitted a set of instructions drafted "for the guidance of a Commission . . . to negotiate with the Sisseton and Wahpeton Indians for the sale of surplus lands." The purpose of the Commission, according to the instructions, was for "negotiating with the Sisseton and Wahpeton Indians for the relinquishment of such portions of the Lake Traverse Reservation not allotted as said Indians may consent to release." Letter, *DeCoteau*, *supra* at 434, N. 13. In the instructions the negotiations were again expressly stated to be pursuant to Section 5 of the General Allotment Act.

Such negotiations are authorized by the 5th Section of the Act of February 8, 1887, which provides: "That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such por-

tions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable, between the United States and said tribe, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress." Instructions at 1, *DeCoteau*, *supra* at 434.

The opinion of this Court in *DeCoteau* specifically noted this fact: "The instructions noted that the negotiations would be pursuant to Section 5 of the General Allotment Act . . ." *DeCoteau*, *supra* at 434.

It is not clear at what point, in the course of exercising the considerable discretion as to the method of payment vested in the Government by Section 5, the decision was made to purchase the surplus land directly from the tribe for a certain sum. By the time the Commission reached the reservation, however, the decision to use the certain-sum method had been made. In terms of the question of disestablishment, the Commission and the members of the Tribe interchangeably described the subject of the negotiations as simply the "sale" of the surplus lands or the "opening" of the reservation.

Although it was noted that it might be "inadvisable" to include all of the unallotted surplus land in the transaction, the operative language of the final agreement provided for precisely that:

The Sisseton and Wahpeton bands of Dakota or Sioux Indians hereby *cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation . . .* Act of March 3, 1891, 26 Stat. 1035.

Apart from the amount of land involved, the operative language of this surplus land arrangement was typical.³

In terms of tribal ratification, Section 5 of the General Allotment Act further provided that the transaction should

3. See, *DeCoteau*, N. 22, at 439 for other examples of contemporary operative language.

be "in conformity with the treaty or statute under which such reservation is held." Act of February 8, 1887, Section 5, 24 Stat. 390. The Commissioner of Indian Affairs had earlier noted that "no provisions regarding the cession or relinquishment of the reservation or any portion thereof" could be found in the 1867 Treaty creating the Lake Traverse Reservation as a permanent reservation. Instructions at 2, *DeCoteau*, *supra* at 434, N. 13. It was therefore concluded that the consent of a majority of the adult male members of the Sisseton-Wahpeton Tribe should suffice. Instructions at 2, *DeCoteau*, *supra* at 434, N. 13. After two weeks of prolonged negotiations, the formal signed consent of a simple majority of the adult male members of the tribe was obtained.

Before the Sisseton-Wahpeton cession agreement was presented to Congress for ratification, the Government negotiators first presented a rather detailed report to the Commissioner of Indian Affairs. This report contained specific explanations for certain provisions and other recommendations. The Commissioner reviewed the report and recommended to the Secretary of the Interior that the measure be reported favorably. S. Exec. Doc. No. 66, 51st Cong., 1st Sess. (1890). In his report to the President, the Secretary followed the recommendation of the Commissioner of Indian Affairs. S. Exec. Doc. No. 66, 51st Cong., 1st Sess. (1890). Significantly, in the Secretary's report it was again noted that the negotiations were pursuant to Section 5 of the General Allotment Act :

Allotments were made in 1887 upon this reservation to all who applied for and were found entitled thereto, in quantities as provided in the act of Congress approved February 8, 1887 (24 Stats., 388), *under the fifth section of which the negotiations resulting in the agreement now presented were conducted.* S. Exec. Doc. No. 66, 51st Cong., 1st Sess. 2 (1890).

A short time later, the entire package, i.e., the agreement, the council transcripts, the reports, and the official recommendations, was forwarded to Congress. S. Exec. Doc. No. 66, 51st Cong., 1st Sess. (1890).

In Congress, after several delays, the agreement was finally reported with certain amendments. In both the Senate and the House, the reports again confirm the substance of the above documentations regarding the role of Section 5 of the General Allotment Act:

The negotiation of said agreement was made under authority conferred upon the Secretary of the Interior by the *fifth section of the act of Congress approved February 8, 1887 . . . S. Rep. 661, 51st Cong., 1st Sess. 1, (1890).*

The said agreement was duly executed December 12, 1889, under the authority conferred upon the honorable Secretary of the Interior of the *fifth section of the act of Congress approved February 8, 1887 . . . H. R. Rep. 1356, 51st Cong., 1st Session, 1 (1890).*

On the floor, the congressmen addressed the question presented only in general terms. Even in this respect, most of the remarks centered around what should be the settled policy in relation to "the disposition of the public lands amongst the settlers" 22 Cong. Rec. 3454 (1891). With reference to the Sisseton-Wahpeton and the other disestablishment legislation under consideration, Senator Dawes did state that "all this land is opened by this bill to settlement as part of the public domain," but he was the *only* congressman that used this particular terminology with specific reference to the legislation. 22 Cong. Rec. 3879 (1891). In all other instances Senator Dawes and the rest of the congressmen simply described the transaction as "opening" the reservations or portions thereof to settlement.

The effect of the legislation on the boundaries of any of the several reservations under consideration was never the subject of concern. Indeed, no one addressed or even mentioned the reservation boundaries. Reservation boundary disestablishment was a fact assumed and understood by all to be a necessary result of the act itself. It was inherent in the process of congressional action opening the reservation to settlement pursuant to Section 5 of the General Allotment Act.

Additional amendments to the measure were offered and accepted in the congressional debates that followed. *DeCoteau, supra* at 441, 446, N. 33. Parts of Section 26, all of Sections 27, 28, 29 and Section 30, as well as the two omnibus provisions applicable to all of the agreements, Section 35 and Section 38, were amendments to the original 1889 Agreement. The first amendments dealt with the preamble (Section 26), the certain sum appropriated (Section 27), the lands occupied by religious or other organizations (Section 28), the authority pursuant to the General Allotment Act for additional allotments prior to the opening (Section 29), and the homestead provision and school lands grant (Section 30). The omnibus provisions were directed to the lands occupied by the religious or other organizations and the school lands grant.⁴ Section 35, Section 38, 26 Stat. 1035. In this form, the 1891 Sisseton-Wahpeton Act recited verbatim and ratified the 1889 Agreement. Act of March 3, 1891, 26 Stat. 1035.

After the enactment of the legislation and prior to the Presidential Proclamation, administratively the area in question continued to be treated as an Indian reservation. All of the applicable federal restrictions remained in full force, e.g. only authorized individuals were permitted even to enter the area in question and members of the Sisseton-Wahpeton Tribe continued to select individual allotments. After the completion of these administrative details, the President issued the Proclamation opening the lands to settlement. Typically the act itself had specified "that the lands . . . be subject only to entry under the homestead and townsite laws of the United States." Act of March 3, 1891, 26 Stat. 1035. Thus President Harrison's Proclamation made reference to this fact (R. App. 72) and thereafter declared that:

Now, therefore, I Benjamin Harrison, President of the United States, do hereby declare and make known that all of the lands embraced in said reservation . . . be open to settlement under the terms of and subject to all of the terms and conditions . . . in

4. The significance of this provision is addressed in detail, *infra*.

said agreements, the statutes above specified, and the laws of the United States applicable thereto. R. App. 73-74.

With the issuance of the Proclamation the boundaries of the Lake Traverse Reservation were necessarily disestablished. The Annual Reports of the Secretary of the Interior and the Commissioner of Indian Affairs provided confirmation of this disestablishment, which Congress assumed, compensating for the absence of any definite language in the Act and the legislative history directed to reservation boundaries. These Reports dealt extensively with the then recent General Allotment Act and thus contained express pronouncements concerning the purpose and effect of the contemporary legislation enacted pursuant to Section 5 thereof. See, for example, 16, 18, *supra*.⁵ By the time the Rosebud legislation was enacted, this aspect of the General Allotment Act had become established policy and the express pronouncements in the earlier reports were accepted precepts. The Reports contemporaneous to the Rosebud Acts make clear in general terms that the same policy was still in effect with respect to Section 5 enactments. The documentation set forth *infra* establishes the crucial and controlling fact that, like the *DeCoteau* Act, the Rosebud Acts were also initiated, negotiated and enacted pursuant to Section 5 of the General Allotment Act. Moreover, because each Rosebud Act affected only a portion of the reservation, the Rosebud documentation is replete with the additional convincing evidence of disestablishment that was a factual impossibility in *DeCoteau*.

5. Moreover, the Reports specifically confirm the effect of the 1891 Act on the Lake Traverse Reservation. In his Annual Report to the Secretary of Interior for 1891, the Commissioner of Indian Affairs stated "... The ratification of agreements by the act of March 3, 1891 (26 Stats., 999), restored to the public domain ... from the Lake Traverse Reservation, South Dakota, about 100,000 acres. ... Report of the Commissioner of Indian Affairs, 44 (1891). The Secretary of Interior's Annual Report was identical in this respect. H.R. Exec. Doc. No. 68, 52d Cong., 1st Sess. VII (1891). Thus, the fact situation in *DeCoteau* was clearly distinguishable from the untenable position rejected in *Moe*, *supra*, that allotment per se pursuant to Section 5 of the General Allotment Act eventually disestablished reservations.

C. The Act of March 2, 1889: The Creation of the Original Rosebud Reservation

Prior to 1851 all of the land now comprising South Dakota was a part of the vast inland empire dominated by various tribes of the Dakota Sioux. After a series of treaties, culminating with the Treaty of 1868, all the land west of the Missouri River was set aside as the Great Sioux Reservation. Act of April 29, 1868, 15 Stat. 635. In 1877 one portion of this reservation consisting of the Black Hills region in South Dakota was removed from the reservation by the Act of February 28, 1877, 19 Stat. 254. By the Act of February 22, 1889, the Great Sioux Reservation was further diminished by nearly eleven million acres, and from the Great Sioux Reservation were created six smaller, separate reservations, one of which was the Rosebud Reservation.

The Act to divide up the Great Sioux Reservation was passed at approximately the same time as negotiations were being conducted with the Sisseton-Wahpeton Tribe with regard to that reservation. It is significant that Congress was simultaneously pursuing two tribal negotiations, one of which involved the purchase of reservation land for a certain-sum as described above in the *DeCoteau* case, and the other of which was for an uncertain-sum. This second negotiation ultimately became the Act of February 22, 1889. Congress did not see any difficulty in pursuing these separate negotiations with their different methods of paying for the taking of reservation territory. This simultaneous use of the certain-sum and uncertain-sum approaches was in accordance with the sole limitation set forth in Section 5 of the General Allotment Act that purchases of portions of reservations should be on "terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians." In contrast to the certain-sum specified in the negotiations and Act relevant to the Sisseton-Wahpeton Reservation, Section 21 of the 1889 Act utilized the uncertain-sum approach.

Each settler under and in accordance with the

provisions of said homestead acts, shall pay to the United States, for land so taken by him, in addition to the fees provided by law, the sum of \$1.25 per acre for all lands disposed of within the first three years after the taking effect of this act, and the sum of seventy-five cents per acre for all lands disposed of within the next two years following thereafter, and fifty cents per acre for the residue of the lands then undisposed of . . . Provided, That all lands herein opened to settlement under this act remaining undisposed of at the end of ten years from the taking effect of this act shall be taken and accepted by the United States and paid for by said United States at fifty cents per acre, which amount shall be added to and credited to said Indians as part of their permanent funds . . . R. App. 92-93.

The permanent fund referred to in Section 21 was established by Section 17 of the Act for the credit and benefit of the Sioux Nation of Indians. Section 22 of the Act states:

That all money accruing from the disposal of lands in conformity with this act shall be paid into the Treasury of the United States and be applied solely as follows: First, to the reimbursement to the United States for all necessary actual expenditures contemplated and provided for under the provisions of this act, and the creation of the permanent fund herein before provided; and after such reimbursement to the increase of said permanent fund for the purposes herein before provided. R. App. 95.

From the terms of this Act it is clear that the exact amount which the Tribe would ultimately receive was dependant upon uncertain future land sales. Although the United States guaranteed to purchase all unsold land at the rate of \$.50 per acre after ten years, this in no way changes the fact that the amount of money which the tribe was to receive was uncertain and was dependant on future land sales to settlers under the general homestead laws. The fact that the United States guaranteed to purchase the land at \$.50 per acre may have set a fixed minimum on the amount which the Tribe might receive, does not in any way make more certain the sum which they were ultimately to receive.

Section 24 of the Act provided for the reservation of sections 16 and 36 in each township for public school purposes. This section, which became a model for a similar section in the 1891 DeCoteau Act, *supra*, and in each of the Rosebud Acts, also made provision for the payment of \$1.25 per acre by the United States to the Tribe for these sections.

While this Act speaks specifically in terms of the restoration of land to the public domain, the congressional debates and legislative history surrounding this Act did not differ materially from that surrounding the Sisseton-Wahpeton Act. The following discussions serve to illustrate this fact:

Mr. Cutcheon. I agree fully with the chairman that this is one of the most important measures that have come before this Congress, or before any Congress of which I have been a member. It is proposed here to *open up* this great reservation . . . for my part I want to see this reservation *opened up*, not less for the Indian than for the sake of the white men . . . It attempts to do that which I most earnestly desire to see done — that is to secure the *opening up* of this great reservation, to let civilization through and around these Indian tribes . . . 20 Cong. Rec. 1495, 1496 (1889).

Once again the twin objectives, characterized as "familiar forces" in *DeCoteau*, of opening land to settlement in accordance with the homestead laws and of "civilizing" the Indian can also be seen from the legislative history of this Act.

Although Congress generally obtained firm agreements with the Indian tribes prior to the enactment of any surplus land legislation opening reservations, since the prior negotiations in this case had not been successful with the Sioux Indians, Congress took the initial step itself. It passed the 1889 Act and required in Section 28 that it be subsequently ratified by the Indian tribes. Section 12 of the Treaty of 1868 was controlling in this respect. It provided for a ratification by three-quarters of the adult male tribal members.

Article 12. No treaty for the *cession of any portion or part of the reservation* herein described which may be held in common shall be of any validity or force as against the said Indians unless executed

and signed by at least three-fourths of all the adult male Indians . . . Treaty of April 29, 1868, 15 Stat. 635.

Congress was well aware of this provision. In the debates on the bill, the different aspects of the ratification question that were to continue to be a great source of congressional concern in the next decade were expressed on the floor of the House:

Mr. BRECKINRIDGE, of Kentucky. I believe, Mr. Speaker that time has come when the General Government ought to recognize the fact that its duty to the Indians lies in a higher domain than in apparently keeping the letter of a treaty, a course which results in keeping the Indians vagabonds and paupers and their reservations mere breeding places of vice.

Mr. PERKINS. And of ignorance and crime.

Mr. BRECKINRIDGE, of Kentucky. I believe that it is in a higher domain that we must find our true relation to the Indian with reference to his development and civilization, and I think the amendment of the gentleman from Mississippi — I say it with that great respect which I have for him and all that he does in the House — is not in the line of the true interests of the Indian. As long as we give the Indian large reservations upon which to roam, and feed him, and clothe him, and thereby constantly tempt him to remain a vagabond, he will be on our hands as a constant source of expense, and not only that, but as the breeder of vice in the localities in which we keep him.

Therefore, our true policy, I believe, is, as rapidly as it can be done under the conditions in which we find him, to destroy the tribal relations of the Indian, allot to him in severalty such land as is necessary for his support, retain in the Treasury a fair price for the land we take from him for the white settler, and for a reasonable length of time pay interest upon it in the shape of an annuity. . . .

. . . I think under the circumstances, that the policy I have indicated is that to which we must look forward; and I did not desire to sit here and seem by my silence to approve the principle that the American Government can not by act of Congress open these reservations, with justice toward the Indians, without their consent. The Supreme Court of

the United States has decided that we have this power. I think our true interest suggests that we should exercise it; and true kindness to the Indian points in the same direction. 20 Cong. Rec., 2d Sess., 1584 (1889).

In this instance, Congress did not have to face the issue. A Commission was appointed to present the Act and the offer it contained to the Sioux Indians for their acceptance and consent. After prolonged negotiations, the Commission submitted its report to the President of the United States on December 24, 1889, indicating that it had received the consent of three quarters of all adult male members of the Sioux Tribes affected. Ratification by tribal members was accomplished by obtaining their signatures on a document which included the following language:

We, the undersigned, being adult, male Indians occupying or interested in the Sioux Reservation established by the Treaty between the United States and various chiefs and headmen of the different tribes of Sioux Indians on the part of such Indians, signed on the 29th day of April, 1868, do hereby certify and declare that we have heard, read, interpreted and thoroughly explained to our understanding the act of Congress of the United States of which the following is a copy to wit:

[Complete Text of 1889 Act]

And after such explanation and understanding with such male Indians of the age of 18 years and upwards, have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act, in each and all of the provisions thereof, and do hereby grant, cede and convey to the United States all the lands of the Great Sioux Reservation outside of the separate reservation therein described, for the uses and purposes and upon the terms and conditions therein provided. S. Ex. Doc. 51, 51st Cong., 1st Sess. pp. 234, 242.

Following ratification by the Tribes, and in accordance with the requirement of the Act in Section 21 that the land would "be disposed of by the United States to actual settlers only, under the provisions of the homestead law," President Ben-

jamin Harrison on February 10, 1890, entered the following Proclamation which made reference to this fact (R. App. 98) and declared:

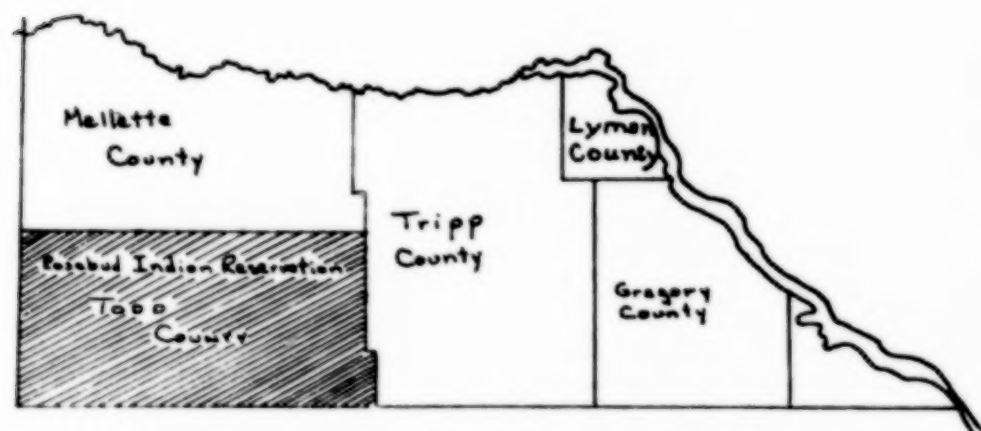
Now, therefore, I, Benjamin Harrison, President of the United States, by virtue of the power in me vested, do hereby make known and proclaim . . . that all the lands in the Great Sioux Reservation outside the separate reservations described in said act . . . shall be disposed of by the United States, upon the terms, at the price and in the manner therein set forth, to actual settlers only, *under the provisions of the homestead law* . . . R. App. 99-101.

The 1889 Act set the stage for the Rosebud legislation. It both created the original Rosebud Reservation and served as a model for the legislation which was to follow.

D. The Rosebud Legislation⁶

1. The Act of April 23, 1904: Gregory County

One of the six reservations created out of the Great Sioux Reservation was the Rosebud. Initially, it encompassed approximately three million acres covering portions of five separate counties.



The unshaded portion of the map represents those areas of the original reservation affected by the three Rosebud Acts.

6. A comment in 18 S.D.L. Rev. 85 (1973), also set forths the basic legislative history of the three Rosebud Acts in the context of the issue presented.

a. The 1901 Negotiations.

In the 1889 Act, Congress planned for the future diminishment of the six reservations created by the Act. In accordance with an amendment offered by Senator Dawes, Section 5 of the General Allotment Act discussed *supra* was incorporated verbatim as Section 12 of the Act of March 2, 1889:

Sec. 12. That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interest of said tribe, it shall be lawful for the Secretary of Interior to *negotiate* with such Indian tribe for the *purchase and release* by said tribe, in conformity with the treaty or statute under which said reservation is held of *such portions of its reservation* not allotted as such tribe shall, from time to time, consent to *sell*, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress . . . R. App. 107.

No action was taken pursuant to Section 12 however until near the turn of the century when the familiar forces noted in *DeCoteau* set in motion certain events which would ultimately culminate in the opening and disestablishment of approximately three-quarters of the original Rosebud Reservation. The parallels between the negotiations involved in the *Rosebud* case and those involved in the *DeCoteau* case are due to the fact that the *Rosebud* negotiations were carried on under the auspices of Section 12 of the 1889 Act which was identical with Section 5 of the General Allotment Act under which statutory authority the Sisseton-Wahpeton negotiations were undertaken.

In 1898, Gregory County, South Dakota was organized with a large portion of the county lying within the Rosebud Reservation. Therefore, it was difficult to maintain a county organization. App. 34. As a result, Senator Gamble from South Dakota introduced a bill late in 1899 to authorize the Secretary of Interior to:

Appoint a commission of three members to treat

with the Sioux Indians within the Rosebud Reservation . . . for the *cession* to the United States government of all Indian land in Gregory County, South Dakota. App. 34.

On February 8, 1900, the Commissioner of Indian Affairs, W. H. Jones, forwarded a copy of the bill to the Secretary of Interior. App. 34. In the cover letter, Commissioner Jones noted that:

The part of the county open to settlement is largely occupied by settlers who are very anxious to have the government take action looking to the *cession* of that portion of the county within the limits of the Rosebud reservation. App. 34.

The Commissioner described the area in question as the "eastern portion" of the reservation and directed the attention of the Secretary to the provision in the 1868 Treaty that addressed the three-fourths requirement for future cessions. App. 35. In this respect, the Commissioner concluded that "more satisfactory results would be obtained" by:

conducting such negotiations through a United States Indian Inspector instead of having a commission appointed consisting of three members to negotiate such agreement. App. 35.

When Senator Gamble reported the bill on March 3, 1900, the Report of the Committee on Indian Affairs reflected the recommendation of the Commissioner. App. 42. Moreover, the Report made clear that the "familiar forces" noted in *DeCoteau* were at work on the Rosebud Reservation.

The people are anxious that this particular part of the reservation be opened and opportunity given for settlement and development of that region of the State . . .

The committee is informed the Indians are willing to treat for a *cession* of the lands in question. To do so would be carrying out the policy of the Government in this particular and in harmony with treaty stipulations and the provisions of the law of 1889, in the opening to settlement of the ceded portions of the Great Sioux Reservation. Those Indians have made their selection for allotments, and this bill only relates to the *surplus* lands of the reservation which are not used and unnecessary to the sup-

port and maintenance of the tribe. The Indians have their full allotments, and they are ample for their use. By opening the lands to occupation and development it would inure to the benefit of the people, the community, the State, and to the Indians themselves. App. 43.

While the bill was pending before the Senate, the legislature of the State of South Dakota joined in support of the measure by memorializing Congress to "restore to public domain" the area in question. App. 48.

A joint resolution and memorial requesting the Congress of the United States to treat with the Indians for the cession and opening for white settlement and free homestead entry all that portion of the Rosebud Indian Reservation lying within the boundaries of Gregory County, S. Dak.

Whereas there is in the organized portion of Gregory County, S. Dak., about six Congressional townships, said tract being too small in area, population, and assessed valuation to successfully maintain a county government without causing such government to become unduly burdensome; and

Whereas there is also within the boundaries of said Gregory County, S. Dak., about 23 Congressional townships of agricultural land which forms a part of the Rosebud Indian Reservation, and upon which are living a few Indians who have all taken their allotments in severalty; and

Whereas it is understood that the Indians are willing for a reasonable compensation to cede all that portion of the reservation herein mentioned to the Government; and

Whereas the ceding of said portion of the reservation to the Government would still leave a sufficiently large and suitable territory to meet all the requirements of an Indian reservation, while at the same time the ceding and opening to white settlers of all that portion of said reservation above referred to would add to the productive farming land of the State, enlarge the area of Gregory County to a proper and desirable size, and greatly lessen the expense of maintaining the government of said county: Therefore, be it

Resolved, That we respectfully petition and

memorialize the Congress of the United States to treat with the Indians at the earliest practicable date for the cession of all that portion of the Rosebud Indian Reservation lying within the boundaries of Gregory County, S. Dak., and that said tract be open to free homestead entry by white settlers; and be it further *Resolved*, That we hereby request our Senators and Representatives in Congress to use their best efforts to effect the object prayed for in this memorial; and the secretary of state is hereby instructed to forward copies of this memorial to our Senators and Representatives in Congress. App. 48, 49, 50.

Shortly thereafter, the matter was resolved by a special provision in the Indian Appropriation Act approved March 3, 1901, which provided:

"That the Secretary of the Interior be, and he is hereby authorized, in his discretion, to negotiate, through any United States Indian Inspector, agreement with any Indians for the *cession* to the United States of portions of their respective reservations or *surplus* unallotted lands, any agreements thus negotiated to be subject to subsequent ratification by Congress." App. 52, 53.

With the passage of this provision, two members of the South Dakota congressional delegation commenced work in the area that was eventually to result in their assuming a leadership role in the House and the Senate for the next decade in all aspects of federal Indian legislation.

Senator Gamble was elected to the United States Senate in 1900 and he remained in that office until 1912. He was very active in all federal Indian legislation during this period. Senator Gamble's fellow solon, Charles H. Burke, was also elected in 1900. He remained in that office until 1908 when he was defeated in the election. He was, however, re-elected in 1910 and served until 1914. Congressman Burke later served for several years as Commissioner of Indian Affairs. Both Senator Gamble and Congressman Burke chaired the Indian Affairs Committees of their respective houses, and both sponsored and reported considerable federal Indian legislation including the three Acts involved in this case.

As a result of their efforts, on March 19, 1901, James McLaughlin, an Indian inspector for the Department of Interior, who ultimately served that Department for over fifty years, was instructed by the Commissioner of Indian Affairs to commence "*negotiations* with the Indians of the Rosebud reservation, in South Dakota, for the *cession* of the unallotted eastern portion of their reserve." App. 53. The instructions of the Commissioner noted that:

To preserve the regularity of the reservation boundary in the event that a cession is made, the townships east of the west boundary line of Gregory County in township 100 to wit, fractional township, range 71 and townships, ranges 72 and 73 lying in Lyman County, should also be ceded. App. 54.

In Inspector McLaughlin's words:

I went to these same Indians with a proposition involving an agreement for the *cession* of a great body of land that was required for settlement by the whites. The land lay in Gregory County, South Dakota, and there were about four hundred and sixteen thousand acres in the tracts. The deal was a big one and there were many big talks. J. McLaughlin, *My Friend the Indian* 309 (1910).

Inspector McLaughlin met with members of the Tribe in April, August and September of 1901. The following extracts from Council Transcripts are representative of the discussions at these meetings. On April 15, 1901, Inspector McLaughlin first met with the Indians of the Big White River district and explained the situation in this manner:

INSPECTOR McLAUGHLIN: The Government desires to purchase of you people the unallotted portion of the Gregory County lands. I will point out to you on this map the tract of land desired, so that you may see and understand it better. In case of the *cession* of the unallotted lands lying within Gregory County, you who have received allotments will not be disturbed on your land at all. Every person would have the privilege of remaining on the land that has been allotted to him, or of relinquishing it and *removing to the diminished reservation*, but I would advise you who have selected tracts of land to remain upon your allotments in

case of the cession of this land to the Government . . . We are not going to transact any business today, as we are not ready for that, as I want to have every Indian of the reservation meet in council, so that they can all hear what is said on both sides . . . App. 334.

OLD LODGE: Of course we do not want to express ourselves right now, but we will get together ourselves in a few days from now and we will consider this matter very carefully, and when we come to the regular council we will then notify the people of our thoughts in regard to the land. App. 334, 336.

In late summer at the Ponca Creek District of the Rosebud Reservation, the negotiations continued in a similar tenor.

INSPECTOR McLAUGHLIN: My friends, I have called to see you today for the purpose of ascertaining whether or not you are willing to sell the unallotted lands in Gregory County to the Government. As you all understand, under your old treaty of 1868, it requires a three-fourths majority of the adult male Indians in order to legalize any treaty for your land. It requires three-fourths of the adult male Indians of the entire reservation. Before talking with the Indians of the reservation, I desired to see and learn something of the character of the land and to meet you people in this district, who are more directly interested than the others. You doubtless know that there has been considerable talk for the past two years of *negotiating with you people for this corner of the reservation*. Last year there was legislation introduced, but it failed to become a law. This last session of Congress a bill was introduced, authorizing the Secretary of the Interior to negotiate with the Indians for this land, and it is a general law now . . . App. 326. In negotiating with Indians for tracts of land, a portion of which has been allotted to them, the privilege has been given to Indians to elect whether they shall remain upon their allotments or relinquish

their allotments and *remove to the reservation*. I do not think that it is for the best interests of the Indians at any time to vacate their allotments. The lands that you have taken are, of course, the best lands of this county, and it is very doubtful if you could find as good land anywhere within the *diminished* reservation for the reason that the best lands have been allotted . . . App. 327.

I will now listen to what you may have to say in regard to the matter. I am ready to answer any questions that you may ask me in regard to it, and after you are through I will talk a little further. Now, the question that I would like to have you answer is whether you desire to dispose of your lands in Gregory County or not. If you dispose of this surplus land *it will leave you about the same sized reservation as the Pine Ridge Indians have*. App. 328.

At this juncture, Respondents are compelled to draw two points to the Court's attention. First, in the context of the 1901 Agreement and negotiations, Petitioner admits that ratification would have necessarily resulted in disestablishment of a portion of the Rosebud Reservation. Thus, even Petitioner has to concede that during this period use of the phrase "diminished reservation" by the parties meant diminished reservation boundaries, not diminished "ownership." Secondly, as evidenced by the statements of Inspector McLaughlin, the proposed agreement was viewed in 1901 as a surplus land measure.⁷

Because of the prevalence of smallpox on the reservation, Inspector McLaughlin waited until September 5, 1901, to convene another council:

I am here under orders of the Secretary of the Interior who was authorized by Congress, at its last

7. Similar "surplus" terminology permeates the *DeCofene* documents, and others set forth, *supra*. In this light, Petitioner's tendered "definition" of a surplus land statute, which is limited to only uncertain-sum Acts, is patently untenable.

session, to negotiate, through any Indian inspector, with any Indian tribes for the *cession of their surplus lands*, and he has sent me here to negotiate with you for your *surplus lands* in Gregory County, that is, for all of your lands in Gregory County that have not been allotted to Indians . . . If an agreement for these lands is reached by us, the allottees of Ponca Creek district will be brought into direct contact with the white settlers but as I said before, it is only a question of time until that condition has to be met . . . App. 337-338.

The cession of Gregory County will leave your reservation a compact, and almost square tract, and would leave your reservation about the size and area of Pine Ridge reservation . . . App. 339.

TWO STRIKE: I will ask you to tell about the price you are going to offer for the land which you have mentioned to us . . . App. 339.

INSPECTOR McLAUGHLIN: That is a good suggestion. I will first say that there is a lowest and highest price for government land, known as the minimum and maximum price. The minimum price for Government land, which is the lowest price, is \$1.25 an acre, but your land is worth more than that, and I am ready to listen to any reasonable proposition and consider it, and give you all that is possible, but it must be such as to meet Departmental approval and ratification by Congress.

LITTLE CROW: Well, you say \$1.25 an acre. We ought to have a little more than that.

INSPECTOR McLAUGHLIN: I am willing to give a little more than that, yes considerable more than that. App. 340.

In the above exchange, the cession terminology clearly emerges. Again, there was reference to the "compact and almost square" shaped reservation that would remain after the transaction. The Indians then retired to council over the matter among themselves and on September 10, 1901, the council reconvened.

INSPECTOR McLAUGHLIN: What price do you hold the land at — that is, the unallotted land in Gregory county? We want no other lands except those in Gregory County — the unallotted. App. 345.

ONE TO PLAY WITH: Well, I know, but I don't want to sell it, and I don't want to say anymore about it. App. 345.⁸

RED FISH: All of us people down in the lower part of the reservation have got children, and we don't know what to do, and we have just stuck one of these white willows in the ground. We have stuck one of those white willow trees in the ground, and we brace our heart to it. All of our little children and ourselves we take our hearts as one and embrace it . . . My friend, that is the reason I want to tell that I don't want to sell, and I brace my heart against this willow. App. 345.

GOOD VOICE: All of our people east of here want me to say certain things. You have just come here to ask us a question. Since you only came here to ask us a question, we have stuck that willow in the ground to set fast to with our hearts. We don't know what to do, so we stuck that fast there to hold on to. Since you have come here just to ask us questions, we have put that willow in the ground, and we want you to take that offer back with you and think the matter over. If you ever come again, by that time we will now what to do, and then you can come here again. App. 346.

TURNING HAWK: My friend, look me in the face. My people have sent me here to say a word and I am going to say it on account of my people. I have been thinking about our children growing up, and I want to say something in regard to them. While I am not a chief myself, yet, I am going to say something that I will stand by. Our children will grow up here yet, so we don't want to sell the land, and I thought I would come here and tell you about it. We people have got to live yet, and the children are growing up; therefore I don't want to sell it. App. 346.

INSPECTOR McLAUGHLIN: My friends, I hoped to have an expression from you in regard to the price you hold those lands at, but all who have talked have spoken in opposition to the cession. App. 346.

8. As was true during the Sisseton-Wahpeton negotiations, when tribal members used the terminology of selling the land or reservation, they understood this to be disestablishing the reservation. Although the members of the Sisseton-Wahpeton Tribe never described the transaction as a "cession," the members of the Rosebud Sioux Tribe did frequently also refer to the substance of the negotiations as a "cession." In this respect, the expression, as indicia of tribal understanding is more persuasive in *Rosebud* than in *DeCoteau*.

HIGH HORSE: My friend, you have come here to talk about the people's lands here, and want to ask me a question. I will never help the President any more, and I am not going to give you this land. App. 346.

INSPECTOR McLAUGHLIN: There have been six of you speakers who say that you do not wish to sell your land. My friends, frequent complaints have been made to the Department that the Rosebud Indians were destitute and suffering because of short rations, but your refusal to sell your unallotted lands in Gregory County will satisfy the Department that you are not so needy. If a man should have a horse for which he had no use and represented to me that he was broke and hungry, and then should refuse to sell the horse at any price, I would conclude that he was not deserving of help . . . The white people of the country, and particularly those in this section of the country, that is, I mean the section of country where your lands are, are demanding the opening of that tract of country and it is only a question of time until it will be opened, and I can make you such conditions now that it will be of great benefit to you, and you should not come here with your eyes closed and your ear closed to any proposition that I may offer, and look at the question as it actually is, that those lands will be opened before long anyway, and now you have an opportunity of making a good bargain with the Government through me, and you ought to avail yourselves of this opportunity . . . Now, I was sent here by the Secretary of the Interior to endeavor to make an agreement with your people. I hoped when I came here that I would be able to do so, and I am going to do my part at least and announce to you what *I am ready to offer for that land*. I do so that you may consider it as something to think of, and in case you refuse that you will sooner or later regret that you had not accepted the offer. App. 346-347, 350.

The impasse subsided when Inspector McLaughlin announced that he was ready to "offer" for the land. The remainder of the negotiations were primarily concerned with only the price per acre and conditions of payment. An agreement was reached on these two issues on the 14th day of

September, 1901, and the council adjourned. By October 4, 1901, the requisite three-fourths of the adult male Indian population had signed and the agreement was forwarded to the Department of the Interior.

At the conclusion of the negotiations and following the pattern established during the Sisseton-Wahpeton negotiations, the Inspector prepared a report that portrayed the negotiations to date:

Under instructions contained in Department letters of the respective dates of March 21 and May 21 last, and Indian Office inclosures, I have the honor to transmit herewith an agreement, dated September 14, 1901, entered into by me, as United States Indian inspector, on the part of the United States, with the Indians of the Rosebud Agency, S. Dak., by which the said Indians *cede* to the United States their *surplus or unallotted* lands lying within the boundaries of Gregory County, S. Dak., approximating 416,000 acres, for a consideration of \$1,040,000. App. 319-320.

The agreement negotiated by Inspector McLaughlin with the Rosebud Tribe of Sioux Indians was a certain-sum cession agreement whose operative language is substantially identical with that of the Sisseton-Wahpeton Agreement:

The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby *cede, surrender, grant, and convey to the United States all their claim, right, title and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted*, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: . . . App. 382.

Neither Inspector McLaughlin nor the Tribe was at any time unaware of the effect this cession was to have on the exterior boundaries of the reservation. They knew a portion of the reservation was to be disestablished. Had Congress merely ratified this agreement, there is doubt that anyone would seriously contend otherwise. In fact, before this Court even Petitioner and *amici* now concede that had Congress ratified the substance of this 1901 Agreement, the reservation in Gregory County would have been disestablished. Pet. at 14.

b. Congress Rejects the Certain-Sum Provision of the 1901 Agreement.

Unknown to the negotiators of the 1901 certain-sum cession agreement, some members of Congress desired a change in the practice of paying tribes directly from the United States Treasury for the purchase of reservation land and then offering this land free to settlers under the general homestead laws. The arrival of the 1901 Agreement in Washington proved to be the catalyst for a lengthy and heated debate in which the forces favoring a change in the practice were ultimately successful.

Congress has used various methods of opening reservation lands to settlement. Prior to 1887, most agreements utilized the certain-sum method. Between 1887 and 1889, both the certain-sum and the uncertain-sum methods were employed. From about 1890 through the turn of the century, Congress again favored certain-sum enactments. However, the winds of change began to blow and members of Congress expressed dissatisfaction with the certain-sum policy.

Congress' primary concern was simply that it was too expensive to give western land away under a free homestead program. Although Congress could have selected a method whereby the particular tribe would continue to receive a certain sum directly from the United States Treasury, which would have been reimbursed by the settlers as they entered the lands, this approach was rejected for two major reasons. First, it necessitated a large direct lump-sum payment from the Treasury at the outset, and second, Congress had had difficulty in the past with collecting the reimbursement from the settlers. Had this method been adopted, the boundaries of a given reservation would as a result have been diminished. *DeCoteau, supra* 445.

Instead Congress seized upon the uncertain-sum method which had been seldom used for a period of almost ten years. In terms of the problems discussed above, this approach, which had been used in the 1889 Act was particularly appropriate as it solved both problems while still allowing

settlers to acquire land at reasonable prices. The use of the uncertain-sum approach was an almost perfect solution. The use of the uncertain-sum approach in 1889 had disestablished portions of the Great Sioux Reservation, and as Respondents shall show, was intended by Congress to do the same in the Rosebud Acts.

On October 11, 1901, the agreement and accompanying documents were presented to the Commissioner of Indian Affairs so that a draft of a bill embodying the agreement could be prepared for Congressional consideration. The draft was prepared, and on the 23rd of November, 1901, it was forwarded to the General Land Office for the addition of a section to provide for "the disposition of the land ceded." On December 3, 1901, this section emerged from the Land Office and the bill was presented to the Senate on March 4, 1901. It is at this point that the controversy over free homesteads began.

Senator Gamble, a leading proponent of the free homestead policy, made this argument in an attempt to convince the Senate to maintain its present practice of certain-sum payments to the Indian tribes followed by free homesteading:

It has long been the policy of the Government to open the Western reservations to free homes. The homestead law enacted so many years ago certainly proved of inestimable value, not only to the West, but to the country at large. A different policy was inaugurated some ten or twelve years ago, under which, when reservations were opened, the settler was obliged to pay the same price for the land that the Government paid the Indians for the relinquishment of their title.

Two years since, a free-homes bill was passed by Congress after having been discussed at great length, especially in this body. It occurs to us that by that act the homestead policy has been reestablished by the Government. App. 64-65.

The opposition, led mainly by eastern Senators, favored a pay-homestead provision and an amendment to that effect was proposed. The argument advanced in favor of this approach was stated by Senator Platt of Connecticut:

The question is whether the Government, in opening the lands to settlement, shall give the lands thus purchased from the Indians to the settlers under the homestead law, or whether it shall require the settlers who take up these lands under the homestead law to pay for them a sum per acre equivalent to what the Government pays the Indians for them. In other words, in opening the Indian reservations which already remain, what is to be the policy of the Government? *Are we to pay the Indians a high price for the lands which we obtain a cession of, and then give those lands to the settlers free of cost, or shall we require the settlers to pay as much for the lands as will make up wholly for the amount which we have paid for them?* That is the question, and Senators will see that it is a far-reaching question.

I do not know how many million acres still remain in Indian reservations which must in the future be opened to public settlement, but there are many millions, and, at the rate we have been paying the Indians under the agreements made with them for such lands, the amount to be expended in the not very distant future will run up into the millions. App. 77-78.

A comment by Senator Clapp of Minnesota shows that the essence of the controversy was fiscal and not related to the policy of disestablishing reservations.

MR. CLAPP. . . . Here is this reservation in South Dakota. Of course the Senators from South Dakota can speak more specifically of the character of the reservation and its surroundings than I can; but because we have to pay the Indians a certain amount for that reservation, as a matter of progressive Indian policy, for the purpose of separating the Indians and *extinguishing the reservation* or for the purpose of meeting the advancing demands of civilization for the use of the lands, it does not follow that the land is primarily and inherently worth so much an acre. App. 109-110.

A further statement by Senator Platt demonstrates that the gist of his concern was also economic and not related to the policy of disestablishing Indian reservations pursuant to Section 5 of the General Allotment Act.

Now, this particular agreement comes here to be ratified upon a payment to the Indians of about \$2.50 an acre for the surplus lands within their reservation which are under the agreement to be ceded to the United States and become part of the *public domain*. The Indians in negotiating said that was not a fair price for the lands and they were worth a great deal more, but finally the negotiation was concluded. The agreement comes here. *So far as the Senate considers it, it is an agreement to open a reservation — to pass ordinarily without any particular examination or any thought of the consequences to the Government in the matter of expense.* App. 80-81.

Although Senator Gamble defeated the proposed amendment in the Senate, the opposition gathered strength in the House and the free-homestead provision was defeated. The House Committee Report summarized the uncertain-sum provision, which was inserted by the House Committee, and the effects of this provision.

[I]t will establish a new policy and be a departure from the policy that has long since prevailed in acquiring Indian lands, as heretofore it has been the practice and policy of the Government to purchase lands from the Indians and pay them therefor and then open the same to entry and settlement, and if not immediately, ultimately, under the provisions of what is known as the free-homestead act.

This bill provides that the lands shall be disposed of under the homestead laws by the settler paying therefor and the proceeds paid to the Indians, and it is expressly provided by section 6 of this bill that the United States shall in no manner be bound to purchase any portion of the land except the school sections, or to dispose of the same except as provided, or to guarantee to find purchasers for said lands, it expressly stating that the intention of the act is that the United States shall act as trustee for the Indians in disposing of the lands and pay over the proceeds from the sale thereof only as the same are received. App. 631.⁹

9. The reference to the "new policy" in the House Committee report accurately reflects that in reference to the cession methods being used during this particular time span, the uncertain-sum policy would be "new" even though it had been utilized by Congress in the past as recently as 1889.

The whole of the congressional debate concerning the 1901 Agreement revolved around the free-homestead versus pay-homestead issue.

The thrust of the entire debate was fiscal and economic. App. 76 to 236. The policy established by Section 5 of the General Allotment Act and incorporated in Section 12 of the 1889 Act of disestablishing and opening to settlement Indian reservation continued unchanged. The pay-homestead provision with concomitant requirement that payments be made directly to the Treasury in trust for the tribe was the only departure from the traditional federal Indian policy recently examined by this Court in *DeCoteau*. Thus, Congress simply returned to the uncertain-sum arrangement used in 1889. This return to that arrangement and the reasons for its adoption had nothing to do whatsoever with reservation disestablishment.

Since *Seymour*, *Mattz* and *DeCoteau* make clear that congressional intent controls, Petitioner would have this Court believe that the change in congressional practice which took place between 1901 and 1904 was a dramatic change in overall federal Indian policy. Petitioner argues that during this period, Congress reversed its long standing practice of disestablishing reservations pursuant to Section 5 of the General Allotment Act. Respondents maintain, as both lower courts held, that the language of the 1904 Act, its legislative history and the circumstances surrounding the 1904 Act clearly demonstrate the contrary. At least in this case, the congressional intent remained the same. The change contemplated by Congress concerned merely the method of payment and nothing else, and was aptly suited to that end. Then, as is occasionally true now, a program whose policy is accepted by all was embroiled in controversy over the method of its financing.

In support of this position, Respondents note that Felix Cohen, in his survey of federal Indian policy, found no essential changes in that policy to take place during the period from 1887, the passage of the General Allotment Act, to 1934,

the passage of the Indian Reorganization Act. Cohen, Handbook on Federal Indian Law 68-88 (1942).

During the period between the 1901 agreement with the Tribe and the decision by Congress to change their free-homestead policy, this Court decided the case of *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

This decision confirmed Congress' belief that it had plenary power to deal with the Indians as it deemed best. The holding of *Lone Wolf* had been anticipated for some time as evidenced by Congressman Breckenridge's statement on the House floor during debate on the 1889 Act. 20 Cong. Rec., 2d Sess., 1584 (1889), *supra*, p. 32. *Lone Wolf* represented a basic cornerstone in federal Indian law. Felix Cohen explained it in this fashion:

The control by Congress of tribal lands has been one of the most fundamental expressions, if not the major expression, of the Constitutional power of Congress over Indian affairs, and has provided most frequent occasion for judicial analysis of that power. From the wealth of judicial statement there may be derived the basic principal that Congress has a very wide power to manage and dispose of tribal lands. F. Cohen, HANDBOOK OF FEDERAL INDIAN LAW 94-95 (University of New Mexico Press).

On fundamental constitutional grounds, *Lone Wolf* specifically recognized that Congress could, in good conscience and for the benefit of the entire country, as well as the individual members of the tribe, enact legislation of this nature *without* formally complying with an identical provision in another treaty that was said to have also required the formal consent of three-fourths of the adult members of other tribes on another reservation. The *Lone Wolf* decision is repeatedly cited, analyzed, explained and relied upon by the Commissioner of Indian Affairs, the Secretary of Interior and Congress in the Rosebud documents.

Applying *Lone Wolf* to the Rosebud situation, Congress no longer needed the ratification of three-fourths of the adult male Indian population on the Rosebud Reservation.

Nonetheless, since the Office of Indian Affairs took the position that because this bill now contained an uncertain-sum provision, it should again be explained to the Tribe, Inspector McLaughlin returned to the Rosebud Reservation.

c. The 1903 Negotiations. The Inspector received his new instructions in a letter dated June 30, 1903, from the Office of Indian Affairs. After a general discussion of the provisions with specific reference to the uncertain-sum arrangement, the letter stated:

It is not deemed necessary herein to give you any definite instructions as to the form of the agreement and the manner of its execution inasmuch as you are thoroughly familiar with these features of the subject. *Attention* is invited in this connection, however, to Departmental *instructions* to you dated *March 21, 1901*, in connection with the negotiation of the former agreement. App. 466.

Although the instructions did not contain any reference to the recent *Lone Wolf* decision, Inspector McLaughlin was obviously familiar with that decision as evidenced by the following remarks made to members of the Tribe, upon his arrival back at Rosebud:

I regard it, under the circumstances, and considering everything in connection with it, a very nice compliment to you people for the Department to send an Inspector to you again to council with you; for the reason that a decision of the Supreme Court of the United States, which court is the interpreter of all our laws, rendered on January 5th last, in what is known as the *Lone Wolf* case, that the Indian is the ward of the Government; that the Government is the guardian; that the guardian has the right to do that which is deemed best for the ward, therefore Congress has the power to enact legislation for the surplus lands of Indians, without consulting the Indians. But this is not the wish of the Secretary of the Interior, or Commissioner of Indian Affairs, nor of the Congressional delegation from this state; they wish to consult the Indians. App. 472.

The Tribe was dissatisfied and the reasons for its discontent were made known to Inspector McLaughlin. In the first

place, tribal members were disappointed with the failure of Congress to ratify the 1901 agreement. In addition, the price per acre to be paid for the lands was an ever-present concern throughout the negotiations, and Inspector McLaughlin attempted to explain the situation to them:

There has been a *sentiment* growing in Congress for a number of years past, and is *now stronger than ever, against paying Indians for ceded lands direct from the U.S. Treasury. That is what is referred to in my letter of instructions, which I read to you, as being a new departure in the manner of disposing of the surplus lands of Indian reservations, and instead of paying Indians direct from the U.S. Treasury as heretofore for their surplus lands, they will be paid from the process of the sale of lands ceded, the Department thus acting as trustee for the Indians, and the Interior Department having charge of the lands will dispose of them in such a manner as will secure to the Indians the highest price obtainable. This is the new departure referred to, and I believe, my friends, that no treaty will ever again be made with Indians, by which they will receive a lump sum consideration for the tract ceded.* App. 472.

[I] am here to try to enter into a new agreement, from which you will receive as much for your lands as the agreement of two years ago provided, *but the manner of disposing of it is different . . .* The Government collects from the homesteader and pays it over to you . . . *I am here to enter into an agreement which is similar to that of two years ago, except as to the manner of payment . . . You will still have as large a reservation as Pine Ridge after this is cut off.* App. 479-480, 489-490.

The objections to the former agreement was not on account of the price, but to the manner of payment . . . (1903). App. 521.

. . . *The Agreement which I submit for your consideration is similar in every respect to that of two years ago, except you will have to wait for the sale of the land to receive your money . . .* (1903). App. 508.

Although the Indians understood the change, to them the change was not right. They were afraid that if the Govern-

ment did not pay them directly, they would never receive the money:

HOLLOW HORN BEAR: I am afraid that if I sign this new treaty that you will take it from us and not give us any pay only the school land money . . . I can look at the past and know by that, that we will not get the money for our land. App. 483.¹⁰

REUBEN QUICK BEAR: Before, you promised that the Great Father would pay us, . . . we don't like this new way . . . App. 487.

HOLLOW HORN BEAR: I asked you to tell the Great Father that we wanted him to buy our land himself, and that is what we want. App. 500.

HOLLOW HORN BEAR: I will use some words that you said to us before. These people accepted the last agreement, you took it to Washington; it pleased the Commissioner and Secretary and the Senate and part of the House but the full House threw the agreement away. They took the good words away and put in what they wanted. App. 511.

GHOST BEAR: I am not going to sign that paper so long as the Great Father will not pay for the land himself. App. 511.

TWO STRIKE: We don't want to sell the land to some farmers. We want to sell the land to the Great Father, and no one else. App. 486.

WHITE WASH: If the Great Father had gone ahead and carried out that old agreement, it would have been all right, but we don't care to have anything to do with this new bill. We got nothing out of that other treaty, and many of the Indians have died waiting for their money. I think many of us will die before we get any money out of this land. I want you to go home with this new bill and tell the Great Father that it is not right. You ought to go home and get it fixed. App. 512.

HOLLOW HORN BEAR: If you take this home and it is not ratified, will you be ashamed to come back here again with another paper and talk to us?

INSPECTOR McLAUGHLIN: No, I would not as it would not be my fault, but at the same time, I

10. Hollow Horn Bear is referring to the 1889 treaty which was an uncertain-sum agreement. This reference in the 1903 negotiations to the 1889 treaty, which unquestionably disestablished portions of the Great Sioux Reservation, is another indication that the Tribal members understood that the 1903 agreement would also disestablish a portion of their reservation.

believe that it will not come back for your concurrence in any changes, for the reason that the agreement conforms to the policy of Congress. *The objections to the former agreement was not on account of the price, but to the manner of payment.* App. 521.

Thus, there is no doubt that the Indians completely understood the new policy of Congress. Homesteaders and not the Government were going to purchase and pay for the land. In the final analysis, the Tribe's fears were not justified as the Tribe ultimately received more money for its land under the 1904 Act than it would have received under the 1901 Agreement.

In spite of their initial disappointment with this congressional approach regarding the method of payment for their land, nevertheless, after the tribe had debated and considered the new proposal, another *cession* agreement was drafted incorporating the uncertain-sum provision. Significantly, the operative language of the new agreement was identical to that of the agreement concluded in 1901:

The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby *cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted*, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows. App. 531.

By the date of the last council, a majority, although less than three-fourths, of the adult male members of the Rosebud Sioux Tribe formally consented to and signed the new agreement.

In his Report to the Secretary of the Interior, Inspector McLaughlin reiterated the understanding of himself and the Tribe as to the character of the agreement. This mutual understanding is reflected throughout the council transcripts. The Report simply stated:

I have the honor to report the result of my negotiations with the Indians of the Rosebud Reser-

vation, South Dakota, for the cession of their unallotted land in Gregory County, South Dakota. R. App. 1.

d. Passage of the 1904 Act. Inspector McLaughlin's report and accompanying documents were forwarded to Washington, and on January 9, 1904, the Commissioner of Indian Affairs submitted his report on the progress of the Gregory County opening to the Secretary of the Interior. There was no heated controversy surrounding the 1904 Act as the adoption in the bill of the uncertain-sum provision stilled the 1901 voices of opposition. The bill was presented to the House Committee on Indian Affairs with the recommendation that it be enacted into law. Less than two weeks later the House Committee made the same recommendation via a lengthy report submitted by Congressman Burke. On the third page therein, it is stated in simple and concise terms:

There is no question but what the Indians have no use for this land that is proposed to be ceded by this bill; that this tract is only a very small portion of the Rosebud Reservation, and is really only a corner of the reservation, which will be left compact and in a square tract and a reservation about equal in size to the Pine Ridge Reservation, in South Dakota.
App. 632.

This statement coincides with a similar description of the effect of the 1901 bill made by Congressman Burke on the floor of the House. The substance of this description had previously been used to describe the effect of the 1901 certain-sum agreement. See, 42 *supra*. It is highly significant that Congress attributed this same effect of the legislation after the change of the uncertain-sum method of payment had been made.

A statement by Congressman Burke on the floor of the House also confirms that a change in the method of payment was the only difference between the 1901 proposal and the 1904 bill:

Mr. BURKE. Mr. Speaker, this bill provides for the opening to settlement of 416,000 acres of land, now

a portion of the Rosebud Reservation, in South Dakota, being that portion of the reservation in Gregory County. In 1901 a treaty was entered into with the Rosebud Indians on the part of the United States, by which the Indians agreed to sell to the Government this land for \$2.50 per acre. That treaty was transmitted to Congress, and because of the fact that it provided that the Government should pay for the lands outright and then take the chance of the Treasury being reimbursed by disposing of the lands to settlers, it never got further than through the Committee on Indian Affairs, which unanimously reported it favorably. It was never given consideration in the House.

Toward the concluding days of the last session of Congress a new bill was prepared, substantially as this bill now provides, and that bill provided that the lands should be ceded by the Indians to the Government, disposed of to settlers under the provisions of the homestead law, and price to be fixed at \$2.50 an acre, as was provided in the original treaty. That bill did not receive consideration in the last Congress because of lack of time, but during the summer that bill was submitted to this tribe of Indians for their acceptance, and forty-eight more than a majority consented to accept the terms of that bill. This bill is substantially the same as the bill which I have just referred to, except that the committee, in view of a suggestion made by the Commissioner of Indian Affairs, in which he said he had no objection to the passage of this bill provided the Indians were insured of as much money as they would have received under the treaty, instead of fixing the price at \$2.75, which was provided in the bill submitted to the Indians during the summer, fixed the price at \$3 per acre for all lands taken within the first six months and \$2.50 for all lands taken thereafter.

It was thought by the committee that this would certainly insure to the Indians as much money as they would have received under the original treaty, and, in my judgment, it insures their receiving considerably more. There is no opposition to the passage of this measure, so far as I know. The Indian Bureau and the Secretary of the Interior have both approved it, providing we fix a price, as we have done, that will insure the Indians as much

money as they would have received under the original treaty. The Committee on Indian Affairs has considered it fully and at length and has spent several meetings of the full committee considering it. The report of the committee is unanimous. I do not care to occupy the attention of the House in making any extended remarks on the bill, and unless some gentleman desires to ask some questions I will reserve the balance of my time. App. 553-54.

As the above documents indicate, the uncertain-sum provision did not materially alter the substance of the 1901 agreement with respect to its effect on the reservation. The tract was still to be "ceded," the reservation still to be left "compact and in a square tract," and the boundaries still to be diminished, in exactly the same manner as if the uncertain-sum provision had never been adopted.

The format of the bill itself, as introduced by Congressman Burke to the House on January 30, 1904, was as follows:

A bill to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

[entire text of 1901 Agreement]

Therefore, be it enacted, etc., that the said agreement be and the same hereby is, accepted, ratified and confirmed as *herein* amended and modified.

[entire Text of 1901 Agreement as amended and modified]

App. 531.

The mere fact that Congress used not only the language of the original 1901 agreement, but the entire text of that agreement is indicative of a continuity of policy. On February 1, 1904, the bill passed the House. Later that month, Congressman Burke, in the course of discussing the Indian Appropriation Act, made a lengthy and complete explanation of the bill for the record and added an appendix to support his explanation.

Congressman Burke began his lengthy explanation with a discussion of the effect of the uncertain-sum provisions:

Now, Mr. Chairman, what has prompted me to ask the indulgence of this committee at this par-

ticular time grows out of the fact that recently this House passed a bill — namely, H.R. 10418 — in relation to the ratification and amendment of a treaty made with the Rosebud Indians in South Dakota, by which the Indians propose to cede to the Government 416,000 acres of land. The bill I refer to was introduced in the House by myself. It was considered by the Committee on Indian Affairs, as the Indian appropriation bill was considered, in several hearings, and was considered and discussed fully in the committee, because the bill proposes what will become, if it should be enacted into law, a new policy in relation to dealing with the Indians in regard to extinguishing their title for lands which they may have in their reservations for which they have no use. . . App. 727.

Mr. Chairman, just a word as to why it was necessary to adopt a new policy in relation to extinguishing Indian title or right of occupancy in reservation lands that were no longer of any use to the Indians, and why it was that the treaty, made with the Rosebud Indians for the cession of that portion of their reservation located in Gregory County, was not ratified by Congress.

Heretofore it has been the policy to enter into a treaty with Indians, the Government stipulating and agreeing to pay in cash a certain price for the land to the Indians. Upon the ratification of a treaty, the land became a part of the public domain, and was disposed of under the homestead laws. It appeared that in many of these treaties a price was paid that was in excess of what the land was actually worth and that instead of the Indians being mistreated it was the Government that was being imposed upon, and it was declared by those in this House who are its leaders that hereafter no Indian reservations could be opened to settlement except on some plan by which the Government would not be obligated to pay the Indian for his right therein, but upon some terms by which the land would be disposed of by the Government and the proceeds paid to the Indians. In the language of our present distinguished Speaker, on the floor of the House in the Fifty-sixth Congress, "When white man pays his money, Indian gets his money."

In 1901 a treaty was made with the Rosebud Indians, signed by more than three fourths of the

male adult Indians, by which they agreed to cede to the United States 416,000 acres of their reservation, being that portion located in Gregory County. The United States in that treaty stipulated to pay to the Indians \$2.50 an acre for that land, or, in round numbers, \$1,040,000. When that treaty came to the House of Representatives it met with the opposition which I have just stated, and *it became necessary, as I say, to find some other way by which the Indians might dispose of this land and the lands could become a part of the public domain and be occupied, settled upon, cultivated, and improved and made useful* instead of lying there of no value to the Indians, without being used by anybody, unless it might be by some trespasser. App. 731-32.

Congressman Burke then restated the congressional understanding of the holding in *Lone Wolf*:

In the meantime the Supreme Court of the United States, in the case of *Lone Wolf* against *Hitchcock*, decided January 2, 1903, a case where the conditions, so far as the provisions of former treaties were concerned, were exactly identical. Article 12 of the treaty with the Kiowa and Comanche Indians was exactly the same as article 12 with the Sioux Indians in the treaty of 1868 and reaffirmed in the treaty of 1889, by which it was expressly provided that the Indians in the future would not be deprived of any of their reservation lands except upon the consent and approval of three-quarters of the male adults. The Supreme Court, in the case just referred to, Congress having amended a treaty which had been made with the Indians, took up that question and decided it squarely, and perhaps for the first time in the history of the Government. They decided that Congress had the absolute right to legislate with the Indians and for the Indians as the Congress in its judgment might see fit, regardless of any treaty conditions or treaty stipulations that might have been entered into in the past, and that decision became the law and furnished an opportunity to enact legislation such as the present *Rosebud* bill does provide, if it is enacted, and we therefore proceeded to amend that treaty so that as the lands were disposed of the money should go into the Treasury and be paid out to the Indians. . . . App. 732-33.

From the opinions cited, and especially the decision in the *Lone Wolf* case, it is demonstrated clearly that the Indian is a ward of the nation and that the United States can legislate as the legislative branch may see fit for his best interests. App. 737.

Then Congressman Burke devoted some time to discussing the benefits to the tribal members living on the allotments and the fairness of the price paid.

It has been claimed that this particular bill is a robbery, and it has been so denominated. I want to say that it provides that the land shall be opened to settlement and what is disposed of during the first six months shall be paid for at the rate of \$3 per acre. In this tract there are 452 tracts that have already been selected by the Indians as allotments. In other words, the Indians have gone first and selected as their allotment one-fifth of the tract; and the Indians are just like white men — they have naturally selected the best tracts. That would be natural. So that the 416,000 acres represents only four-fifths of the tract that is located in Gregory County, a part of this reservation. On the north the land is joined by what was formerly a part of the great Sioux Reservation, where land is now open to settlement. . . .

And I maintain that when we put the price at \$3 an acre, as we do in that bill, it is not only fair and just, but it is more, Mr. Chairman, in my judgment, than the land is worth to-day, and certainly as much as a man ought to be required to pay who goes there and is required to comply with the provisions of the homestead law, as he will have to do under the terms of this bill. I maintain, Mr. Chairman, that the only question to be determined is the price of the land, and that that is one entirely of judgment, and that in looking out for the interests of the Indians if we see to it that he gets as much as he would have gotten under the treaty which he made we certainly can not be accused of having mistreated him. It is the judgment of every man familiar with the conditions in that section of the country that the land will be disposed of under the provisions and terms of this bill, and that it will be paid for, and that the Indians will receive as much money as they would have received under the original treaty, and probably more. . . .

... I have no hesitancy in saying that after having taken allotments as they have in the tract affected by the proposed bill, the land left, which is of no value as it is now, should be made a part of the public domain, and upon terms not only fair to the Indian, but upon terms fair and just to the man who may go there to make his home and cultivate it. . . .

These 452 Indian allotments are practically without value at present, whereas if the adjoining lands are settled upon and improved it will make them valuable, and they can also be rented so as to give the allotments a benefit; and this is a consideration of considerable importance to the Indians having the aforesaid allotments. App. 737, 738, 740.

Finally he concluded:

... You will generally find that the opposition displayed to legislation which is for the interest of the Indians comes from somebody interested in having the Indians obtain just as much money as possible, because the person is desirous of the Indian getting as much money as possible in order that he may get it from him.

To this bill there never would have been any opposition to speak of on the part of the Indians had it not been for the agitation of certain white men residing upon or adjacent to the reservation, who had a selfish interest in the reservation remaining in its present state, possibly to enable them to range their cattle free over the lands and be permitted to continue trespassing. . . .

... upon such terms as are just and fair, to surrender it, that it may become a part of the public domain and be converted into homes and farms and occupied by people who will contribute to the development and material advancement of the country, and I therefore submit that there is no justification for the opposition that has developed against the Rosebud bill, and that it is a measure that proposes to generously pay the Indians for their right to the lands, and I therefore hope that it may be enacted into law. App. 748-49.

Respondents submit that the Court could not expect to find a more thorough and comprehensive treatment of virtually all the issues presented in this case. This admittedly

lengthy speech by Congressman Burke is in perfect harmony with the complete legislative history of the 1904 Act and undermines the crux of Petitioner's entire position.

On February 4, 1904, Senator Gamble and the Senate Committee of Indian Affairs adopted the entire House report, word for word, and submitted it to accompany the bill to the Senate floor. However, the bill was not presented to the Senate for consideration until April 18, 1904. Again Senator Gamble moved that the Senate proceed to the consideration of the bill. After the entire report was first read by the Secretary, the bill passed without any further discussion.

In accordance with the requirement of the 1904 Act in Section 2 that the land would "be disposed of *under the general provisions of the homestead and townsite laws* of the United States and shall be opened to settlement and entry," President Theodore Roosevelt on May 13, 1904 entered the following Proclamation which made reference to this fact (R. App.6) and declared:

NOW, THEREFORE, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power vested in me by law, do hereby declare and make known that all of the lands so as aforesaid *ceded* by the Sioux Tribe of Indians of the Rosebud Reservation, . . . will . . . in the manner described herein and not otherwise *be opened to entry and settlement and disposition under the general provisions of the homestead and townsite laws of the United States*. R. App. 10-11.¹¹

11. The 1907 and 1910 Rosebud Acts and Proclamations discussed *infra* are equally within the purview of this discussion. In addition, other portions of the Proclamations, such as the following preambles of the 1892 Sisseton-Wahpeton and 1904 Rosebud Proclamations also make clear that, in general, no real distinction can be substantiated among any of these proclamations:

Whereas, by agreement made with said Indians residing on said reservation, dated December 12, 1889, they conveyed, as set forth in article one thereof, to the United States, all their title and interest in and to all the unallotted lands within the limits of the reservation set apart as aforesaid remaining after the allotments shall have been made . . .

Whereas, it is provided in the act of Congress approved March 3, 1891 (26 U.S. Statutes, pp. 1036-1038, Sec. 30), accepting and ratifying the agreement with said Indians: "That the lands by said agreement ceded, sold, relinquished and conveyed to the United States . . . R. App. 72-73.

The Presidential Proclamations of the 1891 *DeCoteau* Act, the 1889 Great Sioux Act and the 1904 Rosebud Act were proclaimed pursuant to the same general land laws. It is notable that while all three Acts and all three Proclamations specified varying terms and conditions, each of the Acts and each of the Proclamations nevertheless expressly stated that the area would be generally: "open to settlement . . . under the homestead laws of the United States." R. App. 7, 72, 98.¹²

In this respect all three South Dakota Acts and Proclamations are virtually undistinguishable. In each instance the patent received by a homesteader from the United States further manifests this common origin. It was issued "according to the provisions of the Act of Congress of the 24th of April, 1820 entitled 'An Act making further provision for the sale of *Public Lands*,' and the acts supplemented thereto. R. App. 127.

If Congress actually intended that the Rosebud settlers were to be a class apart and distinct from the other South Dakota settlers in the former Great Sioux and former Sisseton-Wahpeton Reservations by leaving intact the

Whereas by an agreement between the Sioux tribe of Indians on the Rosebud Reservation, in the State of South Dakota, on the one part, and James McLaughlin, a United States Indian Inspector, on the other part, amended and ratified by act of Congress approved April 23, 1904 (Public No. 148), the said Indian tribe ceded, conveyed, transferred, relinquished, and surrendered, forever and absolutely, without any reservation whatsoever, expressed or implied, unto the United States of America, all their claim, title, and interest of every kind and character in and to the unallotted lands embraced in the following described tract of country now in the State of South Dakota . . . R. App. 6-7.

Compare the complete texts of the 1892 Sisseton-Wahpeton Proclamation, the 1890 Great Sioux Proclamation, and the 1904, 1908 and 1911 Rosebud Proclamations. R. App. 72, 98, 7, 50, 57.

12. The assertion of Petitioner and *amicus* United States that the Rosebud lands were not sold pursuant to the general laws overlooks the plain language of these proclamations and boils down to the mere fact that a slightly higher price was paid under these Acts than the usual homestead price.

The setting of a specific price in a surplus land act does not prevent disestablishment, as is evidenced by the fact that the Sisseton-Wahpeton Act also established a specific price. *DeCoteau*, 442.

original "boundaries" of the Rosebud Reservation for some unascertainable reason, that intent certainly cannot be substantiated in the manner in which the general homestead law was invoked, executed and relied upon by the United States and the Rosebud settlers.

Within this historical perspective, the text of the 1904 Act can now be examined.

e. The Text of the 1904 Act.

The strongest indication of congressional intent to be found within the four corners of the 1904 Act is the operative language of the Act:

The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby *cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota . . .* App. 535.

This language is identical to that contained in Article I of the Agreement negotiated in 1901 between Inspector McLaughlin and the Tribe and contained in the Preamble to the 1904 Act. Congress could hardly have adopted a stronger statement of its intention. Indeed, this Court characterized identical language in the Sisseton-Wahpeton Act as "precisely suited to this purpose." *DeCoteau*, *supra* 445.

In addition to the above operative language, the school lands provision of Article II has become a focal point of discussion in both the briefs of the parties and the decisions below. Article II of the 1904 Act contained the proviso that the United States would dispose of the land ceded to it by the Tribe:

. . . except sections sixteen and thirty-six, or an equivalent of two sections in each township, and to pay to said Indians the proceeds derived from the sale of said lands; and also the United States stipulates and agrees to pay for sections sixteen and thirty-six, or an equivalent of two sections in each township, two dollars and fifty cents per acre. App. 536.

This "school lands provisions" was a direct carryover from an amendment to the original 1901 certain-sum cession agreement.¹³ That amendment was offered on the first day the 1901 Agreement was presented on the floor of the Senate for ratification. As Senator Gamble then explained to the Senate:

Under the provision of the enabling act authorizing the admission of the State of South Dakota into the Union, sections 16 and 36 in every township were reserved for school purposes. *This provision did not apply to permanent Indian reservations, but became operative when the Indian title was extinguished and the lands restored to and became a part of the public domain, this would withdraw about 29,000 acres of these lands and would save 387,000 acres to be opened to settlement, which would be affected by the proposed amendment.* App. 64.

The provision of the enabling act to which Senator Gamble referred provided:

Nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act *until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.* Act of February 22, 1889, 25 Stat. 676.

This amendment was immediately agreed to and passed without discussion.

After the uncertain-sum provision was adopted, the school lands provision referred to above was retained in the 1904 legislation. In the discussion on the House floor when Congressman Burke presented the bill on January 30, 1904 the following exchange took place:

Mr. FINLEY: Mr. Speaker, I observe that in section 4, reserving school lands, it is provided that the Government pay for those lands. Is that the usual appropriation that is put in all bills of this character?

13. The same provision was also contained in the 1889 Great Sioux Act and the 1891 Sisseton-Wahpeton Act discussed, *supra*.

Mr. BURKE: I am glad the gentleman has asked me that question. I would state that under the enabling act under which the State of South Dakota was admitted to the Union it was provided that sections 16 and 36 in said State should be reserved for the use of the common schools of that State, and it further provided that as to the lands within an Indian reservation the provisions of that grant would not become operative until the reservation was extinguished and the land restored to the public domain. That enabling act was passed by Congress on the 22d day of February, 1889. In March of that same year Congress ratified a treaty with the Sioux Indians in South Dakota for the cession of something like ten or eleven millions of acres of land, and made an express appropriation, in accordance with provisions of the enabling act, to pay out-right out of the Treasury the money for sections 16 and 36 of that land at the price stipulated for in the [1889] treaty.

Mr. FINLEY: Then, as I understand the gentleman, he bases the wisdom or equity for this provision upon the enabling act admitting South Dakota into the Union?

Mr. BURKE: Yes.

Mr. FINLEY: And not otherwise?

Mr. BURKE: No. App. 554-55.

Precisely the same underlying reason for the inclusion of this school land provision in the final act, namely that the act would extinguish that portion of the reservation and hence make operative the enabling act, is also given in all of the House and Senate Reports:

The bill also provides that sections 16 and 36, or the equivalent of two sections in every township, shall be ceded to the State of South Dakota for school purposes and paid for by the United States at \$2.50 per acre, and an appropriation of \$90,000 is made for this purpose. *This provision is in conformity with the guarantee given to the State of South Dakota by Congress in the enabling act, which provided that any reservations open to settlement subsequent to the admission of the State into the Union, that sections 16 and 36 would be reserved and ceded to the State for school purposes.* App. 434, 452.

Section 4 of the bill provides that sections 16 and 36, or the equivalent of two sections in every township, shall be ceded to the State of South Dakota for school purposes and paid for by the United States at \$2.50 per acre, and section 5 provides for an appropriation of \$90,000 for this purpose. *This is in conformity with the guaranty given to the State of South Dakota by Congress in the enabling act, which provides that in any reservations opened to settlement subsequent to the admission of the State into the Union sections 16 and 36 would be reserved and ceded to the State for school purposes.* App. 632, 681.

The fact that the 1904 Act specifically referred to sections 16 and 36 in its granting of school lands led the district court to conclude:

Here is an unequivocal statement and corresponding action by the Senate of the United States premised solely and only upon the fact that the title of the Indians was extinguished and the lands restored to public domain. It is a strong indication by Congress that its intention was to diminish the size of the Rosebud Reservation. The amendment was adopted without discussion, again buttressing the impression that the diminution of the Rosebud Reservation was a premise upon which all members of Congress acted when enacting the various Indian acts. Pet. App. 81-82.

and the court of appeals to concur:

In the light of the above there can be no reasonable doubt that it was the congressional intent to extinguish the reservation in Gregory County. The Tribe argues that the school lands grant in the South Dakota enabling act would operate automatically upon the extinguishment of a reservation and that since Congress thought it necessary in the 1904 Act to grant school lands to South Dakota, the reservation must not have been extinguished. But we cannot ignore the legislative history outlined above from which it is clear that Congress included the provision to implement the grant in the enabling act and for no other reason. *Thus the action of Congress in passing section 4 of the 1904 Act was premised solely upon an understanding that the reservation would be ex-*

tinguished and is persuasive that such is the effect of the Act. Pet. App. 30-31.

Another provision of the 1904 Act premised upon a congressional understanding of disestablishment is that portion of Section 2 that provides:

And provided further, that all lands herein ceded and opened to settlement under this act, remaining undisposed at the expiration of four years from the taking effect of this act, shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than 640 acres to any one purchaser. App. 539.

Here, as in the 1889 uncertain-sum disestablishment Act where the United States itself agreed to purchase all unentered land after ten years, Congress again adopted a plan whereby the tribal interest in surplus and remaining undisposed lands would be effectively eliminated after a stated period of years.

When viewed from the proper historical perspective, set forth above, the entire text of the 1904 Act demonstrates Congress' intent to disestablish the Rosebud Reservation in Gregory County. Other provisions cited by Petitioner and the various *amici* do not in any way lessen the effect of this Act as intended by Congress.

f. The 1905 Extension Statute. This Court remarked in *Mattz, supra*, that "although subsequent legislation usually is not entitled to much weight in construing earlier statutes (citation omitted) *it is not always without significance.*" 392 U.S. 157, 170. Respondents submit that very shortly after the passage of the Act of April 23, 1904, 33 Stat. 254, Congress enacted a statute which provides the classic instance where subsequent legislation can greatly assist the search for congressional intent. In 1905, a bill was proposed which would extend the time of payment for settlers establishing their residence in Gregory County. This provision was addressed identically in both a Senate and House report:

The Committee on Public Lands, to whom was referred the bill (S. 5799) to provide for the extension of time within which homestead settlers may

establish their residence upon certain lands which *were heretofore a part of the Rosebud Indian Reservation* within the limits of Gregory County, S. Dak., having had the same under consideration, beg leave to report the bill back with the recommendation that it be amended, and that as amended to do pass. . . . R. App. 17, 19-20.

The portion of the Rosebud Indian Reservation which was subject to the legislation provided by the act of April 23, 1904, was thrown open for settlement by the proclamation of the President of the United States under date of May 13, 1904. . . . R. App. 17, 19-20.

Senator Gamble explained the purpose of the bill to the Senate in January of 1905:

Mr. GAMBLE. I ask unanimous consent for the present consideration of the bill (S. 5799) to provide for the extension of time within which homestead settlers may establish their residence upon certain lands *which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, S. Dak.* . . .

The title and text of the Act provided:

An act to provide for the extension of time within which homestead settlers may establish their residence upon certain lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, South Dakota, . . .

Be it enacted . . . , That the homestead settlers on the lands which were *heretofore a part of the Rosebud Indian Reservation* within the limits of Gregory County, South Dakota, opened under 'An Act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provisions to carry the same into effect,' approved April twenty-third, nineteen hundred and four . . . be, and they are hereby, granted and extension of time in which to establish their residence upon the lands so opened. . . . App. 763-64.

A contemporary communication from the Department of the Interior confirms this understanding:
Instructions.

Department of the Interior
General Land Office
Washington, D.C., Feb. 9, 1905.

Register and Receiver,

Chamberlain, South Dakota, . . .
Gentlemen: The Act of February 7, 1905, provides —

That the homestead settlers on the lands which were *heretofore a part of the Rosebud Indian Reservation* within the limits of Gregory County, South Dakota, opened under an act entitled "an Act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation. . . ." be, and they are hereby, granted an extension of time in which to establish their residence upon the lands so opened and filed upon until the first day of May, anno Domini nineteen hundred and five. . . .

You will see that as to lands in the *former* Rosebud Reservation, . . . this act is given effect in your office as to all entries made of such lands prior to November 1, 1904.

W. A. Richards, Commissioner

Approved: E. A. Hitchcock,
Secretary
33 L.D. 408 (1905).

It is the contention of Respondents that the 1905 extension statute is unmistakable evidence that Congress considered the reservation status of Gregory County to have been disestablished by the 1904 Act.¹⁴

2. The Act of March 2, 1907: Tripp County.

The discussion of the 1907 Act, as well as the 1910 Act, is less detailed than that of the 1904 Act, primarily because the later acts were less controversial than the first one. Also, the continuity which runs through the three Rosebud Acts makes a very detailed account of the 1907 Act redundant. Congressional policy and intent on all key issues was es-

14. See, 92-116 for a representative cross-section of similar documentation which confirms that Congress intended the 1904 Act to disestablish this portion of the Rosebud Reservation.

tablished between 1901 and 1904 and the passage of the 1907 Act was largely a matter of routine. It should also be noted that Petitioner centers his arguments on the legislative intent surrounding the 1904 Act and concedes that the construction of that Act is determinative for all three Acts in question.

a. The 1907 Agreement is Negotiated.

By 1906, nearly all of the land made available by the Gregory cession had been taken, and pressure was being applied in Washington for another opening. In the debate on the Indian Appropriation Act in March of 1906, Congressman Burke made reference to the continued role of Section 5 of the General Allotment Act as incorporated in Section 12 of the 1889 Act.

I desire to call attention to a provision of the allotment law to which I have referred substantiating what I have said as to what shall be done with moneys that may be received from the sale of the unused portions of Indian reservations. In *section 5* of that law I read this paragraph:

And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians to whom such reservations belong, and the same, with interest thereon at 3 per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof.

Mr. Chairman, in the bill dividing the great Sioux Reservation in South Dakota into separate reservations that *identical language was incorporated, showing that it was the policy and the intention of Congress when the original allotment law was passed, after giving to an individual Indian a certain tract of land in the form of an allotment, to have the balance of the lands which constituted the reservation sold and disposed of and the proceeds put in the Treasury for the support, education, and civilization of those Indians.* . . . R. App. 26-27.

In early June, Senator Gamble requested that the Secretary of Interior detail an inspector to enter into

negotiations with the Rosebud Indians for a "cession of the surplus unallotted land in Tripp County." On November 22, 1906, he was joined by Representative Burke, who contacted the Office of Indian Affairs to inform them that he had recently visited the Rosebud Reservation to gather information for a bill he was preparing dealing with the "sale of that portion of the reservation located in Tripp County." App. 936-937. The next day, Senator Gamble renewed his request and on the 26th of November, the Assistant Secretary of Interior ordered the Commissioner of Indian Affairs to prepare the instructions for Inspector McLaughlin.

If the Secretary had selected any inspector other than McLaughlin, these instructions could have been an excellent source of information. However, McLaughlin was merely told, "you are familiar with the situation there and for this reason it is not deemed necessary to give instructions in detail for conducting the negotiations." The brief instructions state in part:

The land *ceded* should be disposed of under the general provisions of the homestead and townsite laws of the United States The following would seem to be fair terms, similar to those in the disposal of the *ceded* lands in Gregory County It is suggested that the agreement provided that the Indians shall have the benefit of whatever can be realized from the sale of lands for townsite purposes, and should authorize the Secretary of the Interior to reserve from the *ceded lands* such tracts [T]he unallotted and unreserved lands, if any, in sections 16 and 36 in the *cession* should be reserved for the use of the common schools App. 937-938.

The disestablishment policy of Section 5 of the General Allotment Act through Section 12 of the 1889 Act was still in full force and effect. As far as the Department of the Interior was concerned, this was to be simply another "cession" of a "tract" which extinguished the reservation and restored land to the public domain.

Inspector McLaughlin, after receiving his instructions on December 5, 1906, departed immediately for the Rosebud

Reservation. At the first day of the council held on December 14, 1906, he stated the purpose of his visit:

I am here under orders of the Secretary of the Interior to submit to you a proposition for the *cession* of your surplus unallotted land in Tripp County The Department desires that you *cede* these unallotted lands, to be disposed of under the general provisions of the homestead and townsite laws of the United States App. 766-67.

The Tribe knew why Inspector McLaughlin had returned to the Rosebud. Copies of the bill which Representative Burke introduced on December 3, 1906, had preceded his arrival and had been circulated among them. Inspector McLaughlin was unaware of this, which contributed in part to his initial difficulty in negotiating with the Tribe.

The entire council transcript consists of some ninety pages of negotiations. There are two specific areas which merit discussion. The first is the confirmation of the Tribe's understanding that the 1904 Act had disestablished a portion of their reservation. On the first day of the council, Inspector McLaughlin was drawn into a discussion dealing with the railroads which were being built near the reservation:

INSPECTOR McLAUGHLIN: In regard to the railroad running north of White River, that road is being built across what is called the ceded portion. The Indians of the entire Great Sioux Reservation ceded that portion of the reservation in 1889, by what you call the Crook Treaty, the act of March 2, 1889. That land has all been surveyed and you have received credit on the books of the Treasury, \$1.25 per acre for the land taken the first three years after it was opened, 75c per acre for the next two years, and 50c per acre for all the rest excepting two sections in each township (school lands) for which \$1.25 per acre was credited to you . . . There is no railroad running over any portion of the Rosebud Reservation, none within the boundaries of your reservation. That railroad in Gregory County has not yet come across your reservation, you would receive pay for its right of way. Any of the Indians who may live in Gregory County whose allotments have been crossed by that railroad, have, or will

receive pay for the privilege of crossing their allotments, so you need not worry about that, my friends. App. 770.

In other words, although the railroad had been extended through the "old" eastern boundary of the reservation and nearly the entire area opened by the 1904 Act including some Indian allotments therein, it had not yet been extended through the "new" eastern boundary of the recently diminished reservation. The area opened by the 1904 Act was simply no longer considered to be within the exterior boundaries of the reservation any more than the area ceded by the 1889 Act over which the first railroad ran.

Additional support for this position can be found throughout the negotiations. The Indians continually referred to Tripp County as the *eastern* part of their reservation. For example, High Pipe stated "The best land we have is the *eastern* part of our reservation, Tripp County." When one recalls the continual reference to Gregory County as the *eastern* part of the reservation in the earlier negotiations, these remarks assume an added degree of significance.

The other important area concerns the general continuity reflected in the negotiations. The proposed legislation of 1906 was not only treated in precisely the same manner but was also continually compared with the 1904 Act opening Gregory County. Numerous times the acts were referred to as being, in effect, one and the same. Inspector McLaughlin stated, "You must bear in mind that this agreement provides for the opening of Tripp County the same as your Gregory County lands are being disposed of." App. 799. This is also the manner in which the proposed legislation was later treated in Washington.

At the conclusion of many days of council, another cession agreement incorporating the uncertain-sum provision was drafted. The operative language of the 1906 Agreement was also identical to that of the original certain-sum agreement concluded in 1901.

The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration herein named and in the manner hereinafter provided, do hereby *cede, grant, and relinquish to the United States all claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation* lying south of Big White River and east of range 25 west, of the sixth principle meridian in South Dakota, except such portions thereof as have been, or may hereafter be, allotted to Indians. App. 908.

Article II of the agreement provides for the uncertain-sum method of payment:

In consideration of the lands *ceded and relinquished* by Article I of this agreement, the U.S. stipulates and agrees to dispose of the same, as hereinafter provided, under the provisions of the homestead and townsite laws, or by sale for cash, and shall be opened . . . App. 909.

As in 1903, a majority of the adult male members of the Rosebud Sioux Tribe again formally consented to and signed the new agreement. The uncertain-sum policy was apparently not seen as inconsistent with the "cede, grant, and relinquish to the United States all right, title and interest in" language of Article I by the Secretary of the Interior, the Office of Indian Affairs, Inspector McLaughlin or the Tribe in this instance, any more than it had been in 1889 or 1904.

b. Passage of the 1907 Act.

Although the negotiations ended on January 21, 1907, Inspector McLaughlin's final report was not completed until February 12, 1907. On February 14, 1907, the Office of Indian Affairs, which had been withholding formal approval of the pending legislation until the receipt of his report, recommended that the agreement be ratified. Later that same day, the Secretary of the Interior added departmental approval and the bill was favorably reported out of committee by Representative Burke — a remarkable example of legislative efficiency. However, this display of efficiency by the House resulted in the failure of the 1907 Act to recite and

ratify the exact agreement negotiated by McLaughlin and approved by a majority of the Tribe, as had been the case with the 1904 Act.

The Office of Indian Affairs and the Secretary of the Interior had attempted to make legislation conform in every respect with the expectations of the Tribe. Both had recommended that the agreement be ratified with only those changes necessary to make it effective. App. 906, 923. Accordingly on February 18, 1907, the Senate Committee on Indian Affairs concurred and Senate Report No. 6831 was submitted with the agreement basically intact and incorporated in the body of the bill. App. 952.

By this time, however, the House had already debated and passed a second Burke bill which incorporated substantially the terms of the agreement but without reciting it in the body of the bill. Senator Gamble immediately steered this second House bill through the Senate and it passed without debate, but with two minor amendments. The House refused to accept these amendments immediately and passage of the bill was delayed until a compromise could be agreed upon. By February 27, 1907, a conference committee resolved the difficulties when the Senate receded from its amendments, and the bill became law on March 2, 1907.

Thus, except for the fact that a version of the bill which did not recite the agreement itself had already passed the House by the time the Senate was ready to consider its version of the bill which did recite the agreement the 1907 Act could very well have ended up in the same exact format as the 1904 Gregory County Act — a form containing the exact text of the 1906 cession agreement. The reason for Burke's failure to include the full text of the 1906 agreement was stated in an exchange with Congressman Fitzgerald on the House floor:

Mr. FITZGERALD. The Commissioner of Indian Affairs recommended that all after the enacting clause be stricken out and the agreement be inserted and ratified. That has not been done, and that has not been the practice for several years. I wish to ask this question: Have the provisions of the

treaty been inserted in this bill?

Mr. BURKE. I may say to the gentleman that they have been. App. 884.¹⁵

Despite the speedy passage of the 1907 Act, there is a sufficient legislative history to make clear Congress' understanding that this Act further diminished the Rosebud Reservation. First and foremost, both the House and Senate Committee Reports explained the purpose of the bill in identical language:

The purpose of this bill is to authorize the opening and sale of that portion of the Rosebud Reservation in South Dakota known as Tripp County, and it affects *all that portion of the reservation east of range 25 of the fifth principal meridian south of the Big White River, and embraces about 1,000,000 acres.*

In the second session of the Fifty-eighth Congress a law was passed authorizing a sale of so much of this same reservation as *was* located in Gregory County, the tract affected being about one-half the area embraced in the tract affected by the pending bill and lying immediately adjoining and east of Tripp County. App. 900, 916.

The description of Tripp County as "*all of that portion of the reservation east of Range 25*" precludes any consideration of Gregory County as a part of the Reservation, as does the reference that the reservation "*was*" located in Gregory County. Moreover, the 1907 Act was obviously viewed as simply a further step in the process and therefore aptly described as a "sale" of another "portion" of the reservation.

Upon reviewing these Reports the circuit court concluded:

These materials concerning the description of the

15. When Congressman Burke earlier addressed the House of Representatives on the annual Indian Appropriation Act for the year 1907 noted *supra*, he clarified the reason for the "practice":

Mr. FITZGERALD. Mr. Chairman, while many agreements have been negotiated, none have been ratified, practically none, in the form in which they were negotiated. And that is what confuses the gentleman from Texas [Mr. Stephens].

Mr. BURKE of South Dakota. Mr. Chairman, it is true that since the decision by the Supreme Court in what is known as the "Lone Wolf case" treaties or agreements have not been ratified, but *legislation has been enacted along the line of agreements substantially complying therewith.* R. App.

tract affected by the 1907 Act not only provide a contemporaneous and authoritative construction of the 1904 Act which supports our interpretation thereof, but also directly indicate, in light of the continuity discussed above, that the 1907 Act was similarly intended to further constrict the boundaries of the Rosebud Reservation. Pet. App. 41.

Additionally, the Senate Report earlier described the bill in the same manner.

...cede, grant, and relinquish to the United States all claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation lying south of Big White River and east . . . App. 924.

The remarks of Representative Burke, who presented the bill on the floor of the House on February 16, 1907, left no doubt as to either the effect of this bill or its connection with the 1904 bill.

Mr. Speaker, the bill has the unanimous report of the Committee on Indian Affairs, in which committee it was very carefully considered. The bill is substantially in accordance with an agreement which has just been made with the Indians, signed by forty-two more than a majority of the male Indians over the age of 18 years. It is in line with the recent bills that have been passed affecting the sale of the Indian reservations. It is along the line of the bill which passed in the Fifty-eighth Congress for the sale of that portion of this same reservation that is located in Gregory County. The maximum price of the land in that bill was fixed at \$4 per acre, while the maximum price in this bill is \$6 per acre.

The Indians, as I have stated before, have agreed to the disposition of it under the terms of the bill. They will have left, after this land is disposed of, *a reservation that is substantially 50 miles square, and there are only 5,000 Indians.* App. 882-83.

As the District Court noted:

It can be seen, upon examining a map, that the quotation '50 miles square' referred to in the quote relates approximately to the size of the reservation minus Gregory, Tripp and Lyman Counties. Mellette and Todd County make up a generally square area, roughly 50 miles on a side. Again, one can see the continuous policy with relation to the

Rosebud Indian Reservation and opening the reservation, diminishing the reservation, and extinguishing the reservation nature of the lands concerned. Pet. App. 90.

The 1907 Act became law on March 2, 1907 and like the 1904 Act and the Sisseton-Wahpeton Act it was a surplus land statute enacted pursuant to section 5 of the General Allotment Act as incorporated in section 12 of the 1889 Act.

Again, in accordance with the requirement in the 1907 Act in Section 2 that the land would be "disposed of by proclamation, under the general provisions of the homestead and townsite laws of the United States, and shall be opened to settlement and entry," President Theodore Roosevelt on August 24, 1908, entered the following Proclamation which made reference to this fact (R. App. 50-51) and declared:

Now, therefore, I, Theodore Roosevelt, President of the United States, by virtue of the power and authority vested in me by said Act of Congress, do hereby prescribe, proclaim and make known that all of said lands . . . will be opened to settlement and entry, under the general provisions of the homestead laws. . . . R. App. 50-51.¹⁶

The next day, the Department of the Interior made clear its understanding of the Act and the Proclamation when it referred to the opened area in an instruction to the Commissioner of the General Land Office in this language:

Department of the Interior
Washington, D.C., Aug. 25, 1908.

The Commissioner of the General Land Office.

Sir: Pursuant to the proclamation of the President issued August 24, 1908, for the opening to settlement, occupation and entry to certain lands formerly within the Rosebud Indian Reservation in the State of South Dakota, under the act of Congress approved March 2, 1907 (34 Stat., 1230).

Very Respectfully,
Jesse E. Wilson,
Acting Secretary

¹⁶ See, the general homestead laws discussion of the 1904 Proclamation at 63, *supra*.

c. The Text of the 1907 Act. As explained above, the 1907 Act on its face does not recite the text of the 1906 Agreement and as a result the operative language of the Act does not use the "cede, surrender, grant and convey" terminology. Nevertheless, the operative language of the Act was equally suited to effect the same result. It provided:

To sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range 25 west of the sixth principle meridian, except such portions thereof as have been, or hereafter be, allotted to Indians. App. 869.

Congress saw no critical distinction between the "sell or dispose" language of the 1907 Act and the "cede, surrender, grant and convey" language of the 1904 Act. As the legislative history and surrounding circumstances make apparent, the result was to be the same in both instances — the disestablishment of a portion of the Rosebud Reservation.

Sections 6 and 7 of the 1907 Act again specifically provided that certain school lands were to be granted to the state and paid for by the Federal Government. The members of the House and Senate, who were not as familiar with the previous Rosebud legislation, were consistently given the same explanation for this provision. A portion of the reservation, Tripp County, would be disestablished by the 1907 Act, as portions thereof had been disestablished before, and a section of the enabling act required in such cases that school land then be granted to the state. When Congressman Burke presented the bill to the House the following debate took place:

Mr. FINLEY. Does not the gentleman think that the State of South Dakota should have land for school purposes, as is provided in the bill, and that the Government should pay for the land?

Mr. BURKE. I will answer that question by stating that in at least six different instances since South Dakota was admitted into the Union Congress has made an appropriation and paid for the school sections under the [Enabling Act] guaranty that was given to the State when we came into the Union.

Mr. FINLEY. Why is that where certain sections have been allotted or patented the Government is called upon to pay for sections 16 and 36?

Mr. BURKE. That refers to sections that have been allotted to the Indians, and it has always been the custom where school sections have been allotted to give to the State in lieu of such sections other sections, not exceeding two in any township.

Mr. FINLEY. Is it true that some of these lands have been allotted to the Indians?

Mr. BURKE. It is true that a portion of the lands have been allotted to the Indians.

Mr. FINLEY. Does the gentleman think the Government should be called upon to pay to the State of South Dakota for lands allotted to the Indians? Doesn't the land belong to the Indians? I ask the gentleman if that practice has been the usual one?

Mr. BURKE. We have heretofore appropriated to pay for sections 16 and 36 in every township, or where they had been taken to pay for a section in lieu thereof. Mr. FINLEY. Has that been the rule where lands are allotted to Indians?

Mr. BURKE. Yes; that has been the rule and was the rule in the former Rosebud bill which passed the Fifty-eighth Congress, and is exactly in line with this provision, and the price is the same. App. 883-84.

Although Congressman Burke could have explained the necessity for the inclusion of such a provision more completely, as he had done in other instances, an examination of the House and Senate reports reveals why such a detailed statement in this instance would have been superfluous. One entire page of each of these reports is devoted to this very question:

Section 6 of the bill reserves sections 16 and 36 in each township for the use of the common schools, and grants the same to the State of South Dakota, and section 7 make an appropriation to pay for the same at \$2.50 per acre. This is following the precedents which have heretofore been established in the opening of other reservations in South Dakota, and is based upon section 10 of the act of Congress admitting South Dakota into the Union, approved February 22, 1889. Said section is as follows:

SEC. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any part thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants nor indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands restored to and become a part of the public domain.*

The following are the precedents:

By section 30 of the act opening and dividing the *Great Sioux Reservation*, sections 16 and 36 were granted to the State, and an appropriation of \$1.25 per acre was made to pay for same. Act approved March 2, 1889. (25 Stat. L. 898.)

By section 30, act approved March 3, 1891, opening the *Sisseton and Wahpeton Reservation*, the school sections were ceded to the State and an appropriation made, and the same were paid for at \$2.50 per acre. (26 Stat. L. 1039.)

By act of August 15, 1894, opening the *Yankton Reservation*, the school sections were ceded to the State and paid for at \$3.75 per acre. (28 Stat. L. 313.)

Act providing for sale of *Rosebud Reservation*, in *Gregory County*, school sections were ceded and paid for at \$2.50 per acre, and act authorizing sale of a portion of the *Lower Brule Reservation*, first session of the (Fifty-ninth) Congress, school sections were ceded to the State and paid for at \$1.25 per acre. App. 904.-05, 920-21.

Contrary to Petitioner's position, there can be no question that Congress viewed the school land provision of the 1907 Act as implementing Section 10 of the South Dakota Enabling Act. Moreover, all of the pre-Rosebud acts cited as precedents in the above reports, whether certain-sum or uncertain-sum, unquestionably disestablished portions of reservations. Because each Act thus made operative the guarantee of the enabling act conditioned on this disestablishment prerequisite, each act contained a provision for an identical school land grant. The inclusion of the same grant in the Rosebud Acts for the same stated reasons is positive evidence of disestablishment.

Petitioner has also argued that the allotment provision of Section 2 of the 1907 Act negates a congressional intent to disestablish Tripp County as part of the Rosebud Reservation. Petitioner cites no legislative history to support this assertion, but merely gives his own interpretation of the provision. Section 2 of the 1907 Act reads as follows:

... Provided, that prior to said proclamation, the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotments and to receive in lieu thereof an allotment anywhere within said reservation . . . App. 870.

This provision as compared to the explicit language of the 1910 Act is somewhat awkward because of the special circumstances which then existed on the Rosebud Reservation. As the Commissioner of Indian Affairs explained to Inspector McLaughlin in his instructions:

The Office is in receipt of a communication of November 22, from Hon. Charles H. Burke, wherein he says that he recently visited the Rosebud Reservation for the purpose of gaining information with a view to preparing a bill for the sale of that part of the reservation located in Tripp County; that he found that a large number of Indians had taken allotments in the *western and southwestern parts of the reserve*, and on lands which are now, and always will be, worthless, being nothing but sand hills; that the Indians who have

allotments in the reservation elsewhere than in Tripp County should be permitted, in the discretion of the Secretary of the Interior, to relinquish them and to take allotments in lieu thereof in some other part of the reservation, including Tripp County; App. 936-37.

At the time of these instructions, when the bill was drafted and when the House and Senate Reports were prepared, Tripp County was still part of the Rosebud Reservation. For purposes of allotment, it would continue to be part of the reservation until the act was passed and the lands in Tripp County proclaimed opened to settlement. Thus, the special allotment provision would allow those members of the Tribe with allotments in the southwestern (Todd County) and western (Mellette County) portions of the reservation to reselect allotments on the better land in Tripp County before the opening. If for any reason, any Tripp County allottee did not desire to remain so situated, he also could still reselect anywhere within the reservation. Significantly, Gregory County, the eastern part of the original reservation was not within, directly or indirectly, the purview of this section. In 1907 Gregory County was not a part of the Rosebud Reservation. In light of the special reasons for the wording of the 1907 allotment section, the language of that section is consistent with Congress' intent to disestablish the portion of the Rosebud Reservation contained in Tripp County.

As in the 1904 Act, Section 3 of the 1907 Act provided the means by which all tribal interest in undisposed lands would be eliminated after a stated period of years:

That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry shall be sold to the highest bidder for cash at not less than two dollars and fifty cents per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold after the said lands have been opened to entry for seven years may be sold to the highest bidder for cash, without regard to the above minimum limit of price. App. 871.

Here, as in the 1889 uncertain-sum disestablishment Act

which also contained a similar provision, Congress again insured that the ultimate disposition of the lands would be consistent with reservation disestablishment. The school lands provision and the operative language of the 1907 Act are clearly consistent with that result.

3. The Act of May 30, 1910: Mellette County

a. The Initial Attempts to Open Mellette County.

The familiar forces continued to work with exceptional speed on the Rosebud Reservation. The ink had not yet dried on the proclamation opening Tripp County when Senator Gamble began preparing to further reduce the Rosebud Reservation. In early December, 1908, he submitted a copy of a bill to that effect to the Commissioner of Indian Affairs requesting that Inspector McLaughlin be detailed to the Rosebud Reservation for the purpose of "bringing the bill to the attention of the Indians." On January 26, 1909, Senator Gamble was notified that Inspector McLaughlin would not be available for three or four months. In this same letter, the Commissioner noted that:

[t]he Rosebud Reservation has been reduced very rapidly during the last few years, and intimations have reached this Department from trustworthy sources that there is danger that the land available for allotment may be exhausted if too large a reduction is made at this time. App. 999.

On January 29, 1909, Senator Gamble submitted this report on behalf of the Senate Committee on Indian Affairs:

The *present* area of the Rosebud Indian Reservation aggregates 1,800,000 acres. The land proposed to be open to settlement under the provisions of this bill embrace an area of about 900,000 acres . . . It was at first contemplated to submit this bill, through an Indian Inspector, for the consideration of the Rosebud Indians, but the Inspector, who for a number of years has had that especial work in charge, is otherwise occupied and has been unable to take it up, and it is felt by the committee that the provisions of the bill are fair and just to the Indians in all respects, and it would delay the consideration of the matter unduly if action were

withheld for that purpose, and the measure could not receive consideration during the present session of Congress.

The reservation is *yet* large, and in the judgment of your committee, the surplus and unallotted lands are unnecessary for the use of the Indians. . . . It also provides that the Secretary of the Interior in his discretion, may permit Indians who have an allotment *within the area proposed to be opened to relinquish such allotments and receive in lieu thereof allotments anywhere within the reservation proposed to be diminished.* App. 995-96.

Although the bill was introduced on the floor of the Senate, it was never actually considered. At one point, however, Senator Gamble did explain the bill:

The Rosebud Indians have a reservation of nearly 2,000,000 acres. A bill has been introduced and favorably reported upon by the Interior Department, and a unanimous report made from the Committee on Indian Affairs, under which it is proposed to open about *one-half* of the reservation to settlement. . . . With this reservation standing unopened to settlement, it is retarding the development and growth of that section of the State. App. 993-94.

However, the bill was not acted upon unilaterally by Congress. Instead, Inspector McLaughlin was instructed on April 2, 1909, to present the matter to the Indians for their consideration.

b. The 1909 Negotiations.

McLaughlin's meetings with the Tribe were more abbreviated in connection with the Mellette County opening than in the past. On the reservation, however, Inspector McLaughlin still presented the proposition in familiar terms:

INSPECTOR McLAUGHLIN. My friends, this is the fifth time that I have *negotiated* with you for lands, and I have been here so often with respect to the *cession* of lands, that my friend High Pipe, has given me the name of 'the man who bothers his friends for more land.' App. 1020.

The other members of the Tribe viewed the proceedings in the same light as High Pipe. This was seen as another cession

of land. In the first meeting, which was conducted merely "for the purpose of preparing their minds" for a formal council, the proposed opening was strenuously opposed. The opposition soon waived and by the time a formal council was convened, the Indians had crystallized their specific objections and the bill was given limited approval. The original proposal included the opening of some townships within Todd County, then called Meyer County, along the Todd and Tripp County border. The exclusion of these townships from the opening removed the primary tribal objection.

The disestablishment question itself was again mentioned in an indirect manner. For example, the Indians continually referred to those townships located just west of Tripp County as the new "*eastern part of our reservation.*" App. at 1023. In addition, they also referred to that part of the opening north of the 10th parallel as the entire "*north part of our reservation.*" App. at 1028. Clearly, the Tribe no longer considered Gregory or Tripp County as part of the Rosebud Reservation.

Inspector McLaughlin dealt directly with the disestablishment question in this manner:

The opening of that part of your reservation will not only increase the value of the lands in that tract, but will also add a great deal to the value of the lands in your *diminished* reservation. App. 1031.

The Tribe and the Inspector had the same understanding, i.e., the Act disestablished portions of the reservation.

McLaughlin had no reason to draft a formal cession agreement on this occasion since such express agreements were no longer viewed as necessary by either Congress or the Department of the Interior. Nevertheless, by a letter dated April 29, 1909, Inspector McLaughlin still reported to the Commissioner of Indian Affairs that the Indians expressed "their concurrence in the opening of the northern strip, provided the two tiers of townships in the eastern part of Meyer County remain a part of the *diminished reservation.*" R. App. 56. Since the Commissioner had taken essentially this same position,

these townships were deleted from the area proposed to be opened and a new bill to that effect was completed in 1909.

c. Passage of the 1910 Act.

On January 17, 1910, Senator Gamble submitted a report on this new bill on behalf of the Senate Committee on Indian Affairs:

The present area of the Rosebud Indian Reservation aggregated about 1,800,000 acres. The lands proposed to be opened to settlement under the provisions of this bill embrace an area of 830,000 acres. . . . Although Congress has full power to enact legislation of this character without the consent of the Indians, it was felt they should be fully advised as to the provisions of the pending measure and their views should be asked in regard thereto. The bill in question was submitted to the Indians of the reservation by a competent and experienced Indian inspector and the wishes of the Indians were sought to be met in a fair and just spirit. A number of the amendments proposed are in line with the suggestions and requests of the Indians. . . . App. 1238, 1241.

In its discussion of the allotment provisions of the bill, the Senate Report addressed the disestablishing effect of the bill on the Rosebud Reservation:

It also provides that the Secretary of the Interior in his discretion, may permit Indians who have an allotment *within the area proposed to be opened to relinquish such allotments and to receive in lieu thereof allotments anywhere within the reservation proposed to be diminished.* App. 1238-39.

The bill was then presented to the Senate for consideration on January 17, 1910. Only one passage in the Senate record merits special attention:

Mr. GAMBLE. Mr. President, I have apologized many times for taking the time of the Senate, but *twenty years ago practically the entire western half of the State was an Indian Reservation. It has been opened gradually and by degrees.* The Indian reservations have stood as a menace to the development and growth of the Commonwealth. The Indians themselves agreed to the provisions of this bill after

it had been submitted to them for their consideration. The department agreed to it. App. 1095.

Although the bill passed the Senate that same day, the House did not consider it for some time. Similar legislation was pending in the House and it was necessary to determine whether the Senate bill should be substituted in its place. By February 10, 1910, a decision to adopt the Senate bill was reached by the House Committee on Indian Affairs and Congressman Burke submitted their report:

The Rosebud Indian Reservation when set aside as a separate reservation under the Sioux Act of 1889 contained something over 3,000,000 acres of land. In 1904 the unused and unallotted portion of the reservation in Gregory County, about 500,000 acres, was disposed of and the Indians received therefrom something more than \$1,500,000. In the Fifty-ninth Congress a law was enacted authorizing the sale of the unused and unallotted lands in that portion of the reservation in Tripp County, comprising about 1,000,000 acres, under a bill substantially in the same form as the bill now under consideration, except that the price of the land was fixed in the law, whereas under this bill the price is to be fixed by appraisement. The proclamation for the disposition of Tripp County lands was not issued until last year, and therefore it was not subject to filing until that time. A very large part of the lands has been entered under the homestead laws, but it is not possible to state just how much will be received from the sale of the lands in Tripp County; it will, however, undoubtedly amount to \$4,000,000.

The area comprised in the present bill is about 800,000 acres and the proceeds from the sale thereof, under the terms of the bill, will probably amount to \$3,000,000. *There will still be left a reservation containing about 1,000,000 acres and as the Indians have all been allotted there is no occasion for continuing a reservation larger than it will be when Mellette county is disposed of.* App. 1248-49, 1272-73.

The acreage figures used in these reports are of particular importance. The reference to a reservation of approximately 3,000,000 acres refers to the original Rosebud Reservation. The reports then follow the diminishing of the original reservation

through the two completed openings and the proposed one. The acreage figures, used in the report to indicate the geographic size of the reservation, excluded all lands, both surplus and allotted, within the opened area. This belies Petitioner's argument that "diminished reservation" refers to diminished ownership of land rather than diminished boundaries. To the House Committee and the Senate Committee (see their report on the 1908 bill, *supra*, p. 86), "diminished reservation" meant diminished boundaries.

The bill did not reach the floor of the House for consideration until over two months later. Once again, Representative Burke gave the entire House of Representatives a complete history of the previous Rosebud legislation and placed this bill in the context of these Acts.

Mr. BURKE. Mr. Chairman, this bill is in line — in fact, almost a duplication — of bills that have heretofore passed and become law, proposing to dispose of surplus and unallotted lands of the different Indian reservations of the country. This particular bill refers to that portion of the Rosebud Reservation in South Dakota known as Mellette County. There is contained in the tract affected by the legislation about 800,000 acres of land. The Rosebud Reservation is one of the separate reservations created out of the original Sioux Reservation by the Department and, later, the act of Congress of 1889. There are about 5,000 members of the Rosebud tribe. In the early nineties [1900's] a treaty was made with these Indians by which they agreed to cede to the United States so much of their surplus and unallotted lands as were located in Gregory County. The price to be paid for the lands was \$2.50 an acre. Owing to objections here and elsewhere it was impossible to secure a ratification of that treaty.

In the Fifty-seventh Congress, if I am correct about it, we enacted a law amending that treaty and changing it in this respect. Instead of paying to the Indians \$2.50 an acre, the price agreed upon, we provided that the lands disposed of in the first three months after the opening should be sold at \$4 an acre; the next three months, \$3 an acre; and lands disposed of after six months, \$2.50 an acre; then,

after four years after the opening, the undisposed of lands were to be sold without any conditions as to residence or compliance with the homestead law, and sold outright. The passage of the Rosebud bill was the beginning of the legislation that has since been enacted, relative to the sale and disposition of surplus and unallotted lands in Indian Reservations. . . . App. 1105-06.

Mr. GOLDFOGLE. . . . What is the purpose you desire to reach by this pending measure?

Mr. BURKE of South Dakota. The pending measure is a proposition to sell other lands of this same tribe of Indians in another portion of the reservation, known as Mellette County. I am going to lead up to that after I have briefly given a description of the sales of this reservation that have been made heretofore. . . . App. 1107.

Mr. BURKE. . . . I might say, Mr. Speaker, that there are two propositions to be considered in disposing of the unallotted and unused lands on Indian Reservations. One is, at the earliest possible date, to get among Indians the white men, and have those lands that are of no benefit to anyone, that are lying idle, doing no good, opened up and developed into farms, *and I believe that the placing through what were heretofore reservations actual settlers will have the effect of civilizing the Indians who will have allotments and also give value to these allotments which at present are of very little value.* App. 1111.

The use of the phrase "heretofore reservations" in the final sentence summarizes Congressman Burke's understanding of the disestablishing effect of all three Rosebud Acts.

After these introductory remarks, the debate focused upon provisions of the bill irrelevant to the issues in this case. There was one minor amendment of the bill with which the Senate refused to concur. As a result, a conference committee was appointed to resolve the difficulties, and final passage of the bill was delayed until May 17, 1910.

Once again, in accordance with the requirement in Section 2 of the 1910 Act that the land would "be disposed of *under the general provision of the homestead and townsite laws of the United States*, and shall be opened to settlement and en-

try," President William H. Taft on June 29, 1911, entered the following Proclamation which made reference to this fact (R. App. 58) and declared:

I, WILLIAM H. TAFT, President of the United States of America, by virtue of the power and authority vested in me by the Acts of Congress do hereby prescribe, proclaim and make known that all the . . . land . . . shall be disposed of *under the general provisions of the homestead laws of the United States . . . and be opened to settlement and entry . . .* R. App. 57-58.¹⁷

d. The Text of the 1910 Act.

The 1910 Act is substantially similar to the 1907 Act. Its operative language is identical:

To sell or dispose of all that portion of the Rosebud Indian Reservation [described by metes and bounds], except such portions thereof as have been or may be hereafter allotted to Indians. App. at 1044.

Again, although the Act does not use cession terminology, the language used is equally suited to effect a disestablishment of this portion of the Rosebud Reservation.

The school lands provision was again included in the 1910 Act in Section 3. The history of this provision and the necessity for its inclusion in the 1904 Act and 1907 Act has already been set forth. Therefore, it is only necessary to state that the same reason, namely, the implementation of Section 10 of the South Dakota Enabling Act, was given for its incorporation into the 1910 Act. Once again, Respondents would argue that the inclusion of the school land provision confirms the intent of Congress to disestablish a portion of the reservation rather than the contrary. The House and Senate Committee Reports substantiate this construction:

Sections 16 and 36 of the lands in each township are not to be disposed of, but are reserved for the use of the common schools of the State, and these lands are to be paid for by the Government *in con-*

17. See, the general homestead laws discussion at the 1904 Proclamation at 63, *supra*.

formity with the provisions of the act admitting the State of South Dakota into the Union. App. 1239, 1273.

There is also a provision reserving sections 16 and 36 of the lands in each township for the use of the common schools of the State of South Dakota, to be paid for by the Government at \$2.50 per acre. The granting of these lands to the State is *in accordance with the provisions of the enabling act admitting South Dakota into the Union*. App. 1249, 1273.

On this same subject, Senators Gamble and Crawford had this exchange during the 1910 debates:

Mr. GAMBLE. . . . The Government agreed to reserve these lands and pay for them, not only by law, but *under the enabling act* admitting the State of South Dakota to the Federal Union. . . .

Mr. CRAWFORD. . . . Sections 16 and 36, to which the Senator refers, are held from the settler, and are given to the State to keep good the pledge made to the State by the Government *under the enabling act* when the State was admitted into the Union. . . . Mr. President, with reference to sections 16 and 36, they or their equivalent belong to South Dakota, because the Government of the United States granted sections 16 and 36 to the State *in the enabling act* under which the State was admitted into the Union, as it has granted to states *over and over again millions of acres of public domain* for the establishment and maintenance of common schools. App. 1071, 1073.

In light of its legislative history, Section 8 of the 1910 Act can only be construed as a continuation of the same school lands policy first established with respect to South Dakota in the 1889 Act which was premised on the disestablishment of that reservation. Its later inclusion in the Sisseton-Wahpeton Act and all three Rosebud Acts is significant evidence that all five Acts were intended by Congress to disestablish portions of a reservation and restore them to the public domain.

Another provision premised on reservation disestablishment is Section 10 of the 1910 Act:

That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, granted to the State of South Dakota, or

otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country. App. 1050.

The origin of this provision in the Mellette County Act can be traced to the Secretary of the Interior, R. A. Ballinger, who recommended the proviso in light of the United States Supreme Court Case of *United States v. Dick*, 208 U.S. 340 (1908), which held prohibitions of this nature to be constitutional even though the land was to be ceded and restored to the public domain. Specifically, Mr. Ballinger stated:

The Supreme Court of the United States in [*Dick v. United States*] (208 U.S., 340), sustained a provision prohibiting the introduction of intoxicating liquors upon lands ceded by Indians, for a period of twenty-five years, but emphasized strongly the fact that the provision was for a limited period reasonable in duration. The Department doubts very much the advisability of attempting to impose upon ceded lands a perpetual prohibition against the sale of intoxicants, and also doubts the advisability of prescribing punishment for the sale of liquors in violation of the law. . . . App. 1282.

The provision upheld by this Court in *Dick* was included in a cession agreement disestablishing a portion of Nez Perce Reservation. The inclusion in the 1910 Act of Section 10, modeled after the provision reviewed in *Dick*, was the subject of active opposition in the House. A portion of the debate reads as follows:

Mr. GOEBEL. I am opposed to attaching to the sale of any reservation conditions such as are proposed in this bill.

Mr. GRONNA. Does the gentleman believe it would be safer on a reservation where liquors are permitted to be sold? Would the gentleman not buy land on a reservation where protection is given by the Government, even if such reservation is located in a prohibition State?

Mr. GOEBEL. Oh, I do not know what I would do. At present I would want to get the land without any conditions attached. You must also bear in mind that when the lands are sold there is no longer a reservation, and the laws of the State apply.

Mr. BUTLER. . . . The Indian should not be tempted, if it is possible to keep the tempter away from him. Rum should not be sold to him, and no one should be permitted or encouraged to make the sale to him. I can see no reason why the Government should not impose this condition upon this land.

Mr. MURPHY. Then we ought to make this just as strong as possible, ought we not?

Mr. BUTLER. Yes, sir. Make it as strong as possible. You cannot make it too strong for me. Mr. Chairman, this land, as I understand, is within the boundaries of an Indian reservation. Is that right?

Mr. BURKE of South Dakota. Yes, sir.

Mr. BUTLER. It is proposed now to make a sale of it to somebody of some color, white or black, it does not matter. This being so, the Government has the right to impose at this time upon these titles this condition.

Mr. BARTHOLDT. But if the lands are allotted it is no longer an Indian reservation.

Mr. BUTLER. If the lands are allotted it will be no longer an Indian reservation. It is where, as I understand, the Indian has always lived and where he is going to live, and I believe in keeping the sale of liquor out of his neighborhood . . . App. 1141, 1147-48.

After reviewing *Dick* and the legislative history of section 10 the circuit court of appeals noted:

It is highly significant that the proponents of the Section 10 acceded to the contention that the lands would no longer be an Indian reservation, and justified their position with the same argument used in *Dick, supra* — that the lands were in the neighborhood of the Indian where he would be likely to frequent. There can be no doubt here as to intent. Both sides are explicit "that when the lands are sold there is no longer a reservation." Section 10 and its legislative history reflect a congressional understanding that the effect of the 1910 Act would be to terminate the reservation status of the Mellette County lands.

What we find here is the continuation of the policy, heretofore adopted and implemented, of reducing the size of the Rosebud Reservation in order to make a portion of its lands available to the

new settlers. Again, the congressional motivations are clear, as is its intent. Pet. App. 58-59.¹⁸

Section 1 of the 1910 Act authorized the Secretary to reserve some land for tribal purposes. The exact language reads:

And provided further, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians . . . App. 1045.

Petitioner implies throughout its brief that the inclusion of any provisions in the three Rosebud Acts which benefited Tribal members remaining in the opened area indicates a congressional intent not to disestablish any portions of the reservation. Since Congress was aware that there would be continued presence by members of the Rosebud Sioux Tribe in the area affected, the mere inclusion in the 1910 and other Acts of some provisions for their benefit was entirely reasonable and in no way inconsistent with disestablishment. Similar provisions were also made in *DeCoteau, Sec. DeCoteau* 457.

In a related vein, Petitioner has raised questions regarding the Congressional policy embodied in Section 4 of the 1910 Act insofar as that section provides:

That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians . . . App. 1047.

18. See also *Perrin v. United States*, 232 U.S. 478 (1914), discussed and cited with approval in *United States v. Mazurie*, 419 U.S. 544 (1975). In *Perrin*, a similar liquor prohibition, premised upon reservation disestablishment, was included in the 1894 certain-sum surplus land statute which disestablished the Yankton Sioux Reservation. This Court used the term "ceded lands formerly included in the Yankton Sioux Reservation" to describe the area affected by this Act. *Perrin, supra*, at 480. This statute, along with the 1890 Act and the Sisseton-Wahpeton Act of 1891, was also cited by the 1907 committee reports as precedent for the school lands provision, which was also premised on reservation disestablishment *supra* 83. The only other case even related to the area in question involving a liquor prohibition is *United States v. Nice*, 241 U.S. 591 (1916). *Nice* turned on the status of a Rosebud allottee "in Tripp County, South Dakota" and the fact that his allotment was still held in trust. The location of the allotment relative to the boundaries of the Rosebud Reservation was irrelevant to the issue therein.

Once again the debates themselves, portions of which are set out below, refute Petitioner's argument in this case.

Mr. STAFFORD. Will the gentleman explain why he recommends an exception in appraisal of mineral and timber lands?

Mr. BURKE. Because they are not to be disposed of. We are reserving them. Consequently we provide that they shall not be appraised. . . .

Mr. MONDELL. What is the gentleman's purpose in not disposing of the timber lands?

Mr. BURKE. We are providing in this bill and in the other bill that is exactly in the same form for reserving the timber land for the use of the Indians as a forest. As a matter of fact, on this particular reservation there is not a single stick of timber, but the department seems to think the timber ought to be conserved, and so we put this language in the bill.

Mr. MONDELL. You are conserving some timber that does not exist.

Mr. BURKE. So far as this reservation is concerned, that is true, but we are establishing a precedent that might be good to follow in other reservations where there may be timber. . . .

Mr. BURKE. There is, as a matter of fact, no timber land in this reservation. We doubt if there will be found any lands that will be regarded as timber lands. But it was put in as a mere matter of precaution. App. 1188-1189, 1191.

As in the 1904 and 1907 Acts, in Section 6 of the 1910 Act Congress once again provided the means by which all tribal interest in undisposed lands would be eliminated after a stated period of years:

And provided further, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior be reappraised in the manner provided for in this act. App. 1049.

Here, as in the 1889 uncertain-sum disestablishment Act which also contained a similar provision, Congress insured that the ultimate disposition of the lands would be consistent with reservation disestablishment.

Finally, a proviso from Section 1 of the 1910 Act makes ab-

solutely clear the intent of Congress to diminish and thereby disestablish another portion of the Rosebud Reservation. Immediately after the operative language and metes and bounds description, the 1910 Act includes a provision which allowed Mellette County allottees the privilege of giving up their present allotments and reselecting allotments in the area of the diminished reservation. That provision states:

That any Indians to whom allotments have been made on the *tract to be ceded* may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the *diminished reservation*. App. 1044-45.

A considerable segment of Petitioner's Brief has been devoted to an attempt to negate the plain import of the emphasized phrases above. The significance of this provision is threefold. The first feature is that it clearly distinguishes two tracts of land, the "tract to be ceded" (Mellette County) and "the diminished reservation" (Todd County). The second is the use of the term "ceded" to describe the crux of the transaction. The third is the use of the term "diminished reservation" in a geographical sense to describe what was to remain after the opening legislation.¹⁹

4. The Todd County Documents.

Respondents have placed the forthcoming discussion of Todd County, which remained as the Rosebud Reservation after the passage of the 1910 Act, in this legislative history section of the brief rather than the section dealing with subsequent legislative and departmental treatment since for all practical purposes the proposed Todd County legislation is in *pari materia* with the three Acts themselves. The Todd County documents unequivocally confirm that all of the principals

19. See, the discussion at 39 *supra* where identical terminology is used to explain the same privilege when it was accorded the members of the Rosebud Sioux Tribe in the context of the 1901 certain-sum agreement which, it is conceded, would have disestablished a portion of the reservation. In 1910, as in 1901, diminished reservation meant diminished reservation boundaries.

involved in the decade of Rosebud legislation retrospectively viewed the three Rosebud Acts as having disestablished portions of the original reservation.

With the passage of the 1910 Rosebud Act and the concomitant opening of Mellette County to settlement, the decade of Rosebud legislation presented for construction by this case is complete. Only one of the counties within the original confines of the Rosebud Reservation remained intact. This was Todd County, an area containing approximately one million acres and located in south-central South Dakota. Even before the 1910 Act was passed, interest also was expressed about legislation affecting this portion of the Reservation.

As early as 1909, when the reservation still consisted of Todd and Mellette Counties, the Acting Commissioner of Indian Affairs received inquiries relative to the disposition of Todd County. In response, the Commissioner stated:

No legislation has been enacted providing for the opening of Meyers [Todd] County, South Dakota, and *until* provision has been made for such opening that county will remain a part of the Rosebud Reservation. Letter from Acting Commissioner of Indian Affairs to W. W. Rankin, March 24, 1909.

In 1911, the Todd County legislation was introduced and Inspector McLaughlin was again detailed to conduct the negotiations. In the negotiations there was no question that the members of the tribe were decidedly opposed to the proposition. The refusal of the Tribe to agree to the proposition was noted in a report by Inspector McLaughlin with the recommendation that "the public interest would not be seriously affected" if the legislation was "deferred for a year or two." R. App. 66.

In a letter to the Secretary of Interior with reference to the bill proposing to open Todd County, Senator Gamble noted:

The area proposed to be opened comprises *all the remaining lands within the Rosebud Reservation*. Conditions are such on this reservation I believe it would be greatly to the advantage of the Indians should the lands be open to settlement. Railway ex-

tensions are in prospect in this part of the state. The opening of the lands would encourage and I believe make certain such extension. The development of this part of the state has been greatly retarded in consequence of so much of the lands being held *within* Indian reservations, and I regard it a matter of the utmost importance to the development and growth of the state that the lands be thrown open to settlement at the earliest practicable date consistent with the best interest of the Indians. I know of no substantial reasons why such conditions do not now exist. Letter from Senator Gamble to the Secretary of the Interior, April 12, 1911.

There was no confusion in the minds of those familiar with the 1904, 1907 and 1910 Acts as to the effect those Acts had on the size of the Rosebud Reservation. Todd County was all that remained of the original Rosebud Reservation.

The transcripts of the council meeting held November 11, 1911, between the Tribe and Inspector McLaughlin also indicate what the Tribe understood to be the reservation following the passage of the three Acts previously discussed:

RUBIN QUICK BEAR: . . . Everytime you come here we give you the land, . . . Now we have a small reservation and we don't want to sell or dispose of it in any form. App. 1291, 1292.

TODD SMITH: Whatever I say here about the proposition is all right and Senator Gamble will know it. Tell him that he wants to buy Todd County but Todd (Smith) won't sell it. App. 1294.

LEWIS BORDEAUX: . . . Before when you come for land I was always glad to help you because you are a friend of mine. *We have given you three good counties of land. And this last county we have, there is very little good land left in it, but a large lot of Sand hills. Therefore we want to preserve this land for ourselves and we pray you for this. The people are still increasing and we want to save this land for them. We have given you three counties.* App. 1295.

CLARENCE WHITE THUNDER: . . . The next time the Great Father sends his message to Congress tell him not to mention Todd County. *We will hold on to Todd County for 50 years.* App. 1297.

Inspector McLaughlin's response confirms the Tribes understanding of the 1904, 1907 and 1910 legislation before this Court:

INSPECTOR McLAUGHLIN: . . . I fully appreciate your feelings on this matter, knowing that *your reservation, which was a very large one a few years ago, is now reduced to the limits of Todd County*, and I can understand very well how you feel; that you are very desirous and anxious to retain this County intact. . . App. 1298-99.

In his report submitted on November 3, 1911, to the Secretary of the Interior, Inspector McLaughlin reiterated that:

. . . The Indians appealed very feelingly for the retention of the remaining small acreage of their surplus land for allotment to children born to them, and it is believed that all of the agricultural lands of the *diminished* Rosebud reservation would thus be exhausted in the next two years.

The diminished reservation of the Rosebud Indians is now embraced in Todd County, South Dakota, . . . 161,920.10 acres of surplus and unallotted lands within the diminished Rosebud reservation, . . . In the past eight years the Rosebud Indians have consented to the opening of fully three-fourths of their original reservation, that is Gregory County in 1904, Tripp County in 1909, and Mellette County, recently appraised and registered for, and open to entry April 1st next. With the diminished reservation of the Rosebud Indians being now only about one-fourth of its area eight years ago, . . . The Pine Ridge Indians having at present three-fourths of their original reservation intact, while the Rosebud Indians, whose reservation adjoins the Pine Ridge Indian reservation on the east, have had their reservation diminished in the past eight years to one-fourth of its original area . . . they having so commendably consented to each of the three cessions of their reservation in the past eight years, . . . R. App. 64-65.

McLaughlin concluded by saying that because of the opposition by the Tribe, the opening should be deferred for a year or two, but nevertheless noted that "certain erroneous wording in the Senate bill was superfluous" and should be deleted:

. . . Furthermore, the provision in the first Section of said bill, lines 10 to 14, page 2, is superfluous, which reads: 'That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation.'

The said Senate Bill provides for the opening of all the surplus lands of the Rosebud Reservation and should the bill become a law there would be no *diminished Rosebud reservation*. (emphasis as in original). R. App. 66-67.

On January 23, 1913, Senator Gamble submitted Senate Report Number 1166 containing the following remarks, again indicating that Todd County was the Rosebud Reservation:

In the opinion of your committee the surplus and unallotted lands are unnecessary for the use of the Indians and the opening of *the* reservation will result in a large increase in the settlement and development of that part of the State and will, to a very large extent, enhance the value of the holdings of the Indians. Your committee regards it as of the highest importance, not only to the Indians themselves but to the people of the State and to the General Government, that all the surplus and unallotted lands should be opened to settlement at the earliest practicable date. App. 1308-09.

Then on February 27, after the superfluous language had been deleted as Inspector McLaughlin suggested, the bill passed the Senate. App. 1303-06.

Immediately thereafter, President Woodrow Wilson, the Commissioner of Indian Affairs, and the Secretary of the Interior received several petitions from members of the Rosebud Sioux Tribe requesting them to take action and prevent the legislation from passing the House. The petition of March 26, 1913, from the Rosebud Agency was typical:

Hon. Commissioner of Indian Affairs
Washington, D.C.

Dear Sir:

—We, the undersigned Indians of Todd County, S. D. respectfully protest against the proposed opening of this County to settlement. We protest against opening of *our last remaining portion of our*

once large Reservation for the following reasons:

1. We have already been deprived of the Counties of Gregory, Tripp and Mellette within the last few years . . .

4. We think that the great body of Indians interested should be consulted with and their wishes ascertained in regard to parting with our last remnant of a Reservation. App. 1333.

Another petition to the Commissioner of Indian Affairs stated " . . . We have already, since the treaty of 1889, contributed to the Government, to be opened to settlers, and sold, four tracts of land . . ." App. 1354. The petition addressed to the Secretary of the Interior contained similar remarks " . . . The very best farming land that was in the Rosebud Reservation we gave up when the Counties of Tripp and Gregory were opened to settlement." App. 1331.

The Secretary of Interior in turn reported that:

... by successive openings within the past few years their reservation has been reduced to less than one-fourth of its original area . . . This leaves within the diminished reservation at this time the lands in Todd County only. . .

The Indians are decidedly opposed to opening the diminished reservation at this time and that there will be but little desirable land to place on the market, should the bill become a law, I have the honor to recommend that no further action be had on the bill at this session of Congress. . . . App. 1318.

In spite of its passage in the Senate, the bill to open Todd County was tabled in the House and never became law. This fact indicates the significance of active Tribal opposition. Moreover, the above materials not only confirm Respondent's understanding of what the Congress, members of the Rosebud Sioux Tribe, the Department of the Interior and the Office of Indian Affairs meant by the term "diminished Rosebud Reservation" in the early 1900's, but they also serve to illustrate the precise "effect" the three Acts, presented above, had on the original boundaries of the Rosebud Reservation.

ARGUMENT

II

THE SUBSEQUENT TREATMENT OF THE AREAS AFFECTED BY THE ROSEBUD LEGISLATION CONFIRMS THAT CONGRESS INTENDED TO DISESTABLISH THOSE PORTIONS OF THE ROSEBUD RESERVATION.

A. Subsequent Legislative, Judicial and Administrative Treatment

The subsequent legislative, judicial and administrative treatment of the areas opened to non-Indian settlement by the 1904, 1907 and 1910 Acts confirms the conclusion that the legislation did disestablish portions of the Rosebud Reservation in Gregory, Tripp, Mellette and Lyman Counties, South Dakota. Petitioner states that "viewed as a whole, subsequent legislation, not in *pari materia*, whether pro or con, is not a reliable indicator of the congressional intent expressed in earlier Rosebud statutes, since in the subsequent statutes Congress was not focusing on the issue." Petitioner's Brief at 22. Respondents recognize the subsequent legislation is generally not accorded "much weight in construing earlier statutes" but nevertheless it is not always "without significance." *Mattz v. Arnett*, at 505, n. 25. However, this is especially true when the documentation presented, like the Todd County legislation and the 1905 extension statute, is for all practical purposes in *pari materia* with the Rosebud Acts. See, 99-104 *supra*. Moreover, the bulk of the material presented in this section by Respondents is roughly contemporaneous with the passage of the Rosebud Acts.

Taking an approach opposite of that of Petitioner, *amici* Association on American Indian Affairs, Inc., et al., devotes half of its entire brief to arguing that "subsequent administrative and legislative treatment of the areas of the Rosebud Reservation opened to settlement by the 1904, 1907 and 1910 Acts confirms the conclusion that the legislation did not effect the disestablishment of reservation lands in Gregory, Tripp and Mellette Counties, South Dakota."

Amicus Association on American Indian Affairs, Inc., et al. Brief at 13. Other *amici* raise similar points. Respondents feel compelled to examine the subsequent legislative, judicial and administrative treatment of these areas and view such treatment as a whole and in perspective. Significantly, much of this subsequent legislation was drafted by the sponsors of the Acts in question and is persuasive evidence of the earlier congressional intent. This complete examination reveals yet another source from which it can be discerned that Congress intended the three Rosebud Acts to disestablish Gregory, Tripp, Mellette and Lyman Counties from the Rosebud Reservation.

The two most helpful indicia of earlier congressional intent which are found in subsequent legislation are the 1905 extension statute and the Todd County documents, which have been included in the discussion of the three Rosebud Acts. See, 69, 99, *supra*. Since Petitioner places great emphasis on the 1904 Act and argues that the congressional intent found in that Act would control for the other two acts, the 1905 extension statute is of crucial importance as a subsequent legislative act which confirms the intent of Congress to disestablish a portion of the Rosebud Reservation.

The following acts, reports and documents are a representative cross-section of the treatment accorded the areas affected by the three Rosebud Acts by Congress, the judiciary and the Department of the Interior and contemporary South Dakota historians. Clearly, the closer in time the subsequent legislation is to the period at issue, the more relevant it is to discerning congressional intent. These materials reflect an especially consistent treatment throughout the first fifteen years following the Rosebud legislation.

An early example of the view of the Commissioner of the General Land Office appears in correspondence to Congressman Burke which was published in the *Congressional Record*.

Department of the Interior,
General Land Office,
Washington, D.C., February 7, 1906.
Hon. Charles H. Burke,
House of Representatives.

SIR: I have the honor to acknowledge the receipt of your letter of January 27, 1906, requesting to be furnished with a statement up to and including December 31, 1905, of the lands disposed of in Gregory County, S. Dak., in what was formerly the Rosebud Reservation, opened to entry under the provisions of the act of April 23, 1904 (33 Stat., 254)

Very respectfully,
W. A. Richards,
Commissioner.

R. App. 34.

In this period, the Acting Secretary of the Department of the Interior also used this language in writing to the Commissioner of the General Land Office regarding the opening of Tripp County:

Department of the Interior
Washington, D.C., Aug. 25, 1908.
The Commissioner of the General Land Office.

Sir: Pursuant to the proclamation of the President issued August 24, 1908, for the opening to settlement, occupation and entry of certain lands formerly within the Rosebud Indian Reservation in the State of South Dakota, under the act of Congress approved March 2, 1907 (34 Stat., 1230)

Very Respectfully,
Jesse E. Wilson,
Acting Secretary

In its annual review of the progress of South Dakota for 1908, the South Dakota State Department of History discussed the opening thus:

Perhaps the most noteworthy event of the year 1908 in South Dakota has been the opening to settlement of the unallotted lands in Tripp County, formerly a portion of the Rosebud Indian Reserva-

tion. Pursuant to an act of Congress providing for the opening of these lands, the President in September issued his proclamation, directing that from October 7 to October 17 parties desiring to locate homesteads upon the Tripp County lands be permitted to register for the chance of drawing a homestead at Dallas, Bonesteel, Chamberlain or Presho, and during the period designated 114,769 registrations were made, though there were but four thousand homesteads available. The registrations exceeded the former rush to Gregory county lands in 1904 by more than eight thousand . . . V. South Dakota Historical Collections, 45 (1910).

The Report of Rosebud Indian Agent C. L. Ellis to the Commissioner of Indian Affairs contained several references to the diminished reservation.

The Rosebud agency is located on the southern boundary of South Dakota.

Originally the reservation extended to the Missouri River on the east, a distance of 150 miles east and west, and 50 miles north and south, and contained about three and one-quarter million acres of land. By the act of April 23, 1904, that part now known as Gregory County, on the eastern end of the reservation, was ceded and the surplus or unallotted lands made available for homesteads. Under the act of March 2, 1907 (Public No. 195), a tract about 33 miles east and west and 50 miles north and *east of the present diminished* reservation was opened to settlement . . .

What is now known as the *diminished* reservation is a tract about 50 miles square embracing the western part of the original reservation . . .

If the whole of the *diminished* reservation was attached to Tripp County for judicial purposes it would be much more convenient and expeditious . . .

The diminished reservation, containing about 2500 square miles, is wholly a cattle range at present . . .

The burning of the grass on a great part of Tripp County early last winter found many of the cattlemen's stock to seek grass on the *diminished* reserve . . .

In order to keep the cattle of the *diminished* reservation from becoming reinfected by mingling

with outside stock I have asked authority for material and labor to complete the south fence line, and to construct a fence along the Tripp County line to the 10th Parallel. Many thousands of posts and much labor have been expended in repairing the fences on the other *three* sides of the reservation this season and they are now in good condition.

All the other day schools are located in the *diminished* reservation . . .

C. L. Ellis
Special Indian Agent
in charge

Report to the Commissioner of Indian Affairs, Annual Report of the Rosebud Agency, C. L. Ellis, Agent, 21-27 (1909).

The 1909 Annual Report of the Commissioner of Indian Affairs included this reference to the Rosebud Reservation following the Tripp County opening:

Rosebud, S. Dak. — This reservation has been *diminished* very rapidly within the last few years by various acts of Congress . . .

Respectfully,
Robert G. Valentine,
Commissioner

Report of the Commissioner of Indian Affairs, 42 (1909).

In 1910, Commissioner Valentine added:

Department of the Interior
Office of Indian Affairs
Washington, November 1, 1910

Sir:

I have the honor to transmit herewith the Seventy-ninth Annual Report of the Office of Indian Affairs covering the period July 1, 1909, to June 30, 1910 . . .

Rosebud S. D. . . . *This reservation has been diminished previously by various acts of Congress, and the act of May 30, 1910 (36 Stat., 448), authorizes the disposal of a part of this reservation lying within Mellette and Washabaugh counties* . . .

Respectfully,
Robert G. Valentine,
Commissioner

Report of Commissioner of Indian Affairs, 32 (1910).

In 1911, the Interior Department handed down this land decision:

NEWTON DEXTER BURCH.

Decided April 26, 1911.

ROSEBUD INDIAN LANDS —

SOLDIERS' ADDITIONAL RIGHT.

Lands in the *former* Rosebud Indian Reservation opened by proclamation of August 24, 1908, under the act of March 2, 1907, to disposal under the general provisions of the homestead and townsite laws, are not subject to appropriation by location of soldiers' additional right.

PIERCE, First Assistant Secretary:

Newton Dexter Burch has filed appeal from decisions of January 18, 1911, by the Commissioner of the General Land Office, holding for cancellation the final certificate and rejecting his several applications filed on or about October 8, 1909, under sections 2306 and 2307, R.S., for the different subdivisions of the SW 1/4 of Sec. 27, T. 101 N., R. 76 W., 5th P.M., containing 160 acres, Gregory, South Dakota, land district. The said tracts are a part of the *former* Rosebud Indian Reservation, opened by proclamation of the President, dated August 24, 1908 (37 L.D., 122), under the act of March 2, 1907 (34 Stat., 1230) . . . 40 L.D. 54 (1911).

It also sent these Instructions to the Register and Receiver in Gregory County:

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE

Washington, D.C., September 8, 1911.

Register and RECEIVER,

Gregory, South Dakota.

GENTLEMEN:

Your attention is directed to the provision of the act of Congress, approved August 17, 1911, (Public — No. 22), entitled "An act extending the time of payment to certain homesteaders in the Rosebud Indian Reservation, in the State of South Dakota," which reads as follows:

Be it enacted by the Senate and House of Representative of the United States of

America in Congress assembled, That any person who has heretofore made a homestead entry for land in what was *formerly* a part of the Rosebud Indian Reservation, in the State of South Dakota, . . .

Very Respectfully,

John McPaul

Approved Samuel Adams,

Acting Secretary

40 L.D. 267 (1911).

In 1914, discussing a bill involving Tripp County, Congressman Burke described Tripp County as follows:

Mr. BURKE of South Dakota. I will state that this bill originally was introduced, or a similar bill, was limited to *Tripp County, what was formerly part of the Rosebud Reservation* . . .

. . . so that it will be limited to lands in Tripp County, in what was *formerly within* the Rosebud Indian Reservation . . .

. . . so that the bill will be limited to lands in Tripp County *formerly within* the Rosebud Indian Reservation. 52 Cong. Rec. 453 (1914).

The Act of January 11, 1915, 33 Stat. 792, refers to the former reservation:

AN ACT Providing for the purchase and disposal of certain lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in *Tripp County, formerly a part of the Rosebud Indian Reservation in South Dakota*.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in Tripp County in what was *formerly within the Rosebud Indian Reservation in South Dakota*, as have heretofore been opened to settlement and entry under acts of Congress which did not authorize the disposal of such mineral lands.

The Commissioner of the General Land Office wrote to the Register and Receiver in Gregory County on July 15, 1915 regarding this Act:

TRIPP COUNTY MINERAL LANDS

ACT JANUARY 11, 1915.

INSTRUCTIONS.

(No. 425).

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE

Washington, July 15, 1915.

REGISTER AND RECEIVER,

United States Land Office

Gregory, South Dakota.

SIRS:

1. The act approved January 11, 1915 (38 Stat., 792), provides that all lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in Tripp County, in *what was formerly within the Rosebud Indian Reservation in South Dakota*, as have heretofore been opened to settlement and entry under acts of Congress which did not authorize the disposal of such mineral lands,

...

Very respectfully,
Clay Tallman,
Commissioner.

Approved, July 15, 1915.

A.A. Jones

First Assistant Secretary

44 L.D. 195 (1915).

The Department added this Editorial Note in its 1915 Land Decisions:

EDITORIAL NOTE

In connection with the foregoing regulations as printed in pamphlet form there were added, as an appendix, for information and convenient reference, reprints of the instructions of ... 44 L.D., 195, under the act of January 11, 1915, providing for the purchase and disposal of certain lands containing kaolin, kaolinite, fuller's earth, China clay, and ball clay, in Tripp County, *formerly* a part of the Rosebud Indian reservation, South Dakota.

Department of the Interior, Ann. Rep. of the Comm. of the General Land Office, 165 (1916):

Rosebud Indian Lands.

Unentered land *within the former Rosebud Indian Reservation in Lyman and Tripp Counties, South Dakota*, were offered for sale to the highest bidders for cash at Gregory, South Dakota, on September 23, 1915. The prices received ranged from \$2.50 to \$7 per acre. In all 5,763.71 acres were sold for \$17,866.07. All tracts were sold. The sale was made under authority of the act of March 2, 1907 (34 Stat. 1230), and departmental regulations approved July 28, 1915 ...

Very respectfully,
Clay Laceman,

Commissioner

44 L.D. 325 (1915).

The Act of March 3, 1919, 40 Stat. 1320, also referred to the former reservation:

Be it enacted, etc., That the Secretary of the Interior is hereby authorized to sell and convey to the White River Cemetery Co., for cemetery purposes, for a price not less than the appraised value thereof, a 10-acre tract within the *former Rosebud Indian Reservation in Mellette County, S. D.* described as the northeast quarter of the southeast quarter of the northwest quarter of section 34, township 42 north, range 29 west, sixth principal meridian, or such part thereof as may be required: *Provided, however*, That the tract conveyed shall be described in terms of the legal survey, the consideration to be paid to the superintendent of the Rosebud Reservation, to be deposited in the Treasury of the United States to the credit of the Rosebud Indians. App. 1373.

Included in the committee report on this bill is a letter to Hon. Charles D. Carter, Chairman, Committee on Indian Affairs, House of Representatives, from Alexander T. Vogelsang, Acting Secretary of the Interior, June 7, 1918:

My Dear Mr. Carter:

I am in receipt of your letter of May 14, 1918, enclosing for report H.R. 12082, a bill authorizing the sale of certain lands in South Dakota for cemetery purposes, and in response thereto I have the honor to submit the following:

The bill proposes to convey for cemetery purposes a 10-acre tract within the *former Rosebud Indian Reservation in Mellette County, S. Dak.*, described

as . . . Said land was opened to settlement and entry under the act of May 30, 1910 (36 Stat., 448) which provides that the proceeds of the sale of the lands in said *former Indian reservation* shall be deposited to the credit of the Indians thereof and that the disposal of the land by the United States shall be in trust for their benefit . . . App. 1378-79.

Regarding an act passed one day earlier on March 2, 1919, the Department of Interior sent these Instructions to the General Land Office:

REGULATIONS FOR THE SALE OF
CERTAIN LOTS IN MINNEOTA
TOWNSITE IN THE *FORMER*
ROSEBUD INDIAN RESERVATION,
TRIPP COUNTY, SOUTH DAKOTA.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
Washington, D.C., May 24, 1919.

THE COMMISSIONER OF THE GENERAL
LAND OFFICE:

Under the provisions of the act of March 2, 1907 (34 Stat., 1230), you are directed to cause the lots designated from "A" to "S" inclusive in the townsite of Minneota within the *former* Rosebud Indian Reservation, Tripp County, South Dakota, to be offered for sale at public outcry under the supervision of the Superintendent of Opening and Sale of Indian Lands at not less than their appraised value on June 14, 1919, . . .

Alexander T. Vogelsang,
First Assistant Secretary

47 L.D. 177 (1919).

In the Annual Report of the Board of Indian Commissioners to the Secretary of the Interior, Report on the Rosebud Indian Agency, South Dakota, 28 (1921), Hugh L. Scott stated:

. . . there are several large towns *on what used to be* the old reservation. The largest is Winner, [Tripp County] . . .

Similar legislative and judicial documentation could be set forth for the 1920's through the 1950's, but for all practical purposes, the probative value of such material as a source of

ascertaining congressional intent in the three Rosebud Acts would be less significant. To illustrate the fact that this treatment was continuous through subsequent decades, Respondents note the official Interior correspondence to South Dakota Congressman E. Y. Berry from Assistant Secretary of Interior Roger Ernst dated *May 28, 1959* still described the area in question and the diminished Reservation in the same unambiguous terms as were used in the decade immediately following the enactment of the Rosebud legislation.

. . . The boundaries of the Rosebud Indian Reservation *were changed* to eliminate Mellette County, and to show the *diminished reservation as lying in Todd County*. This is shown on the map of South Dakota published by this Department in 1918. There remained, however, within Mellette County Indian allotments which were effective and did not come within the cession and opening under the 1910 act. The ceded lands fall within not only Mellette County, but *the adjoining counties* within the *former* boundary of the original Rosebud Indian Reservation. Letter from Roger Ernst, Asst. Secretary of the Interior to E. Y. Berry, May 28, 1959.

In *DeCoteau*, a search of the entire legislative history of the Lake Traverse Reservation subsequent to the 1891 Act did not produce a single statute that described the reservation as a "former reservation" or as "heretofore a reservation." In fact, the only references of this nature available in *DeCoteau* were a series of informal Interior correspondence which also contained references of a contrary nature. As a result, the Court did not deem either the references or the sources persuasive:

The parties here have cited us to numerous Interior Department *memoranda and letters*, issued over the past 80 odd years, which refer to the area either as a "reservation" or a "former reservation." No consistent pattern emerges. The authors of *these* documents appear to have put no particular significance on their choice of a label. *DeCoteau, supra* at 1092, N. 27.

In this case a consistent pattern did emerge, and not just in letters authored by individuals who were somewhat removed from the Acts in question. The legislation and other documents in support of this construction were generally drafted by the sponsors of the Rosebud Acts and others familiar with those Acts. In this respect, the Rosebud documents are inherently more persuasive than those presented to the Court in *DeCoteau*. Treatment of the area affected by the three Rosebud Acts confirms the construction that these three statutes disestablished portions of the Rosebud Reservation.

B. The Cartographic Record.

One area which was accorded special significance by this Court in *DeCoteau* was the cartographic record, which graphically illustrated the fact that the Department of the Interior considered the Sisseton-Wahpeton Reservation to have been disestablished by the Act of 1891. The cartographic history of the areas affected by the Rosebud Acts is identical to that of the Sisseton-Wahpeton Reservation. The official maps reflect the immediate and unequivocal interpretation of the three Acts by the various administrative agencies involved, and buttress the express administrative pronouncements, *supra*, that the Rosebud Reservation had in fact been diminished to encompass only Todd County.

For a considerable period of time prior to the Acts in question, the official Map of the Office of Indian Affairs showing Indian Reservations within the United States was compiled under the direction of the Commissioner of Indian Affairs and appended each year to his Annual Report. Reservations as such were represented by solid configurations superimposed upon an outline of the United States. When an act or cession disestablished a reservation or a portion thereof and the reservation was subsequently opened to settlement that portion of the configuration thereby affected was consistently removed. Ordinarily this removal corresponded with the year of the proclaimed opening rather than the year in which the

Act was passed. For example, *see* the treatment accorded the Great Sioux Reservation in 1888 and 1889, as well as the reservations in Oklahoma between 1891-1900.

In the 1890's, prior to the Acts in question, the Rosebud Reservation was represented yearly as a large configuration occupying the eastern one half of the southwestern portion of the State of South Dakota. In 1904 that portion of the Rosebud Reservation affected by the 1904 Act, and opened in 1904, i.e., Gregory County, was immediately, and unequivocally removed from this official map in the same manner that other reservations or portions thereof that had been similarly disestablished were removed throughout the 1880's and 1890's. The same official Maps of 1904, 1905, 1906, 1907 and 1908 thus depict the Rosebud Reservation in the precise square configuration that Inspector McLaughlin, Congressman Burke, Senator Gamble and the House and Senate Reports described.

The Counties of Tripp and Mellette affected by the 1907 and 1910 Acts would have been similarly removed in the years when opened, i.e., 1909 and 1911, but for a change in administration in 1909 which resulted in a change in the manner of depicting the reservations thus disestablished. When Commissioner Valentine replaced Commissioner Luepp as the Commissioner of Indian Affairs, colored lines appeared encompassing what had theretofore been reservations, but had subsequently been disestablished. These areas were referred to in legend as "open" reservations. This change occurred in 1909, when Tripp County was opened. As a result, the 1909 Map of Indian Reservations appeared with colored lines encompassing what had been the Gregory and Tripp County portion of the original Rosebud Reservation, as well as many other disestablished reservations such as those in Oklahoma, and these areas were referred to in the legend as "open" Reservations. After the opening of Mellette County in 1912, only Todd County was denoted in the legend as an "Indian Reservation" and it was represented by the same solid configuration as in years past. Other reservations that

had never been disestablished and opened to settlement also continued to be represented in the same manner as Todd County.

By 1918, the "open" areas encompassed by colored lines were shaded gray, and designated in the legend as "Former" Reservations. All four counties affected by the three Acts in question are depicted in this manner, as well as the areas of other reservations that were similarly disestablished. As one might expect, only Todd County continued to be denoted in the legend by the solid configuration representing "Indian Reservations."

If the three Rosebud Acts were intended by Congress to disestablish portions of the original Rosebud Reservation in the same manner as this Court found that Congress had disestablished the Sisseton-Wahpeton Reservation by the 1891 certain-sum Act, the corresponding cartographic records of both areas should be identical. This is in fact the case. The Sisseton-Wahpeton Reservation, initially removed from the maps when proclaimed open in 1892, reappeared encompassed by the colored line that denoted "open" reservations in 1909, and was shaded to denote a "former" reservation in 1918. This Court viewed as significant this early cartographic record of the Sisseton-Wahpeton Reservation when contrasted with the recent 1971 Bureau of Indian Affairs map which designated the Sisseton-Wahpeton area as an Indian reservation. *DeCoteau, supra* at 442, n. 27. Respondents deem it highly significant that cartographic record of the original Rosebud Reservation is identical with that of the original Sisseton-Wahpeton Reservation from initial disestablishment through its resurrection on the recent 1971 Bureau of Indian Affairs map.

The cartographic record of the Rosebud Reservation is even more persuasive than that of the Sisseton-Wahpeton Reservation because the Rosebud Acts affected only portions of the Rosebud Reservation. This fact is graphically documented on other official maps.

These are the official Maps published under the direction of

the General Land Office, the agency primarily responsible for the entire cartographic record of the United States. Again, the treatment accorded the Rosebud Reservation reflects the statements and decisions of the agency noted *supra* that the Acts in question diminished the Rosebud Reservation so that it encompassed only Todd County. Although these maps were not revised annually, as were the official Maps of the Office of Indian Affairs, each revision reflected the Acts passed in the interim years by the removal of that portion of the reservation from the map. In certain instances the title of the particular reservation was restricted to indicate that a certain area was no longer within a certain reservation. With specific reference to the Rosebud Reservation, in 1901 the title "Rosebud Indian Reservation" extended over the length of the four county area.²⁰ Upon revision in 1910, the same title was reprinted so as to cover only Todd and Mellette Counties. By 1916 the process was complete so that only Todd County was represented as the Rosebud Reservation. The 1918 Map of the Secretary of Interior, *supra* at 115, also reflects that the boundaries of the Rosebud Reservation encompassed only Todd County.

Other miscellaneous maps are on file in the Cartographic Archives Division of the National Archives, Washington, D.C., which similarly reflect the fact that the Rosebud Reservation had been diminished. While varying in detail, some of the published Maps separate the "ceded" area from the "diminished reservation" by "diminished reservation boundaries." Respondents have obtained certified copies of these and other maps referred to *supra* and will lodge them with the Clerk.

Respondents would not want to imply that each and every map on file in the Cartographic Archives Division, National Archives, Washington, D.C., unequivocally supports this

20. Special mention should be made of the fact that some of the same official 1901 maps were later penciled over to indicate certain areas had been "opened" in certain years. These maps, published in 1901 would, of course, be so entitled that *Rosebud Indian Reservation* would extend over the original area of the Rosebud Reservation. In this respect, they are initially somewhat misleading.

construction. Some maps, such as the map reproduced at P. App. 17a, which are free hand and unpublished and originally designated for an unrelated purpose, as well as a few others, do not depict the Rosebud Reservation in the manner related above.

C. The Indian Reorganization Act.

Petitioner and *amici* attempt to draw some support for their arguments from certain provisions of the Indian Reorganization Act of 1934, 48 Stat. 984. This Act is 24 years removed from the language, legislative history and surrounding circumstances of the last Rosebud Act in question, and was passed at a time when it is acknowledged that the philosophy of Congress was no longer in accord with the philosophy of Section 5 of the General Allotment Act of 1887 and the special surplus land statutes enacted pursuant thereto. However, the 1934 Act will be discussed in this brief to put to rest the erroneous contentions which Petitioner and *amici* have derived from the Act, and, more importantly, because this Act, when viewed in light of its actual purpose and effect, lends support to the position of the Respondents.

Respondents have examined the legislative history of the Indian Reorganization Act and find it to be unsupportive of the sweeping conclusions which Petitioner and *amici* have attempted to draw from it. Insofar as the instant case is concerned, the Act was simply intended to do what it expressly accomplished — the restoration of lands to tribal ownership. The Act was not intended to have, nor did it incidentally have, any effect upon reservation boundaries. Section 2 of the Act directed the Interior Department to temporarily withdraw certain "remaining surplus lands of any Indian reservation *heretofore* opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public land laws of the United States" from further disposition by public entry, sale or otherwise. Act of June 18, 1934, *supra*. In all, it is obviously begging the question to argue that any reservation included in a list of "reservations *heretofore* opened" must necessarily exist as

originally defined. The proper construction of the term "opened" in the *Rosebud* context is just as much at issue here as it was in *DeCoteau*.

The United States has placed great reliance upon a 1934 Interior Department Opinion relating to the temporary withdrawal pursuant to this Section of the Act. In its Memorandum, the United States originally asserted that the Department "decided in a formal opinion (54 I.D. 559) that this type of statute does not terminate the reservation status." M.U.S. at 8. In its brief before this Court, the United States has retreated from this position. Nevertheless, continued reliance is placed upon this Opinion.²¹

The purpose of the Opinion, as stated in the Opinion, was simply to respond to a general directive in the 1934 Indian Reorganization Act to temporarily withdraw certain "remaining surplus lands of any Indian reservation *heretofore* opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public land laws of the United States" from further disposition by public entry, sale or otherwise. Act of June 18, 1934, *supra*. The temporary withdrawal was necessary to insure that restoration to tribal ownership at a later date would at least be possible; 54 I.D. at 561 (1934).

21. The United States no longer asserts that this 1934 Opinion held that uncertain-sum acts did not disestablish reservations, since Respondents have pointed out the 1938 Opinion discussed above. Instead, the United States now asserts that every court which has ever decided the effect of such an act on reservation boundaries has held that the boundaries were not affected.

On the contrary, even when this question was first presented, the courts consistently held that the uncertain-sum acts affecting South Dakota did disestablish portions of reservations. See *United States v. LePlant*, 200 F. 92 (D.S.D. 1911); *State v. Sauter*, 48 S.D. 409, 205 N.W. 25 (1925); *State ex rel. Swift v. Erickson*; *State ex rel. Hollow Horn Bear v. Jameson*, 77 S.D. 527, 95 N.W. 2d 181 (1959); *Lafferty v. State for Jameson*, 80 S.D. 421, 125 N.W. 2d 171 (1963); *State v. Barnes*, 81 S.D. 511, 137 N.W. 2d 793 (1965); *Beardslee v. United States*, 387 F. 2d 280 (8th Cir. 1967); *Kills Plenty v. United States*, 433 F. 2d 292 (C.A. 8 1943); *State v. White Horse*, 231 N.W. 2d 847 (S.D. 1975); *Cook v. State*, 215 N.W. 2d 832 (1974); *United States v. Long Elk*, 410 F. Supp. 1171 (D.S.D. 1976). The last case is also ignored by Petitioner in the selected list of "Surplus Land Statutes" in its appendix. Pet. App. 14a. Petitioner and the United States also ignore the recent decision of the South Dakota Supreme Court in *White Horse*, *supra*, which specifically followed the Court of Appeals decision below with respect to the 1910 Rosebud Act.

In the Opinion, a decision was made to include within the withdrawal only those lands "the proceeds of which, if sold, would be deposited in the Treasury of the United States for the benefit of the Indians." 54 I.D. at 563 (1934). In other words, the withdrawal was to be limited to those remaining surplus lands of reservations heretofore opened only by surplus land statutes in which the method of payment was the uncertain-sum arrangement. The basis for this distinction is stated in the Opinion.

It can safely be said that it would not be *to the interest of the public* to restore to the Indians all undisposed of public lands that at one time were in Indian ownership but afterwards became the property of the United States by outright cessions from the Indian owners, [*DeCoteau*] because, as stated above, such action would mean the withdrawal in many States of all lands now available for entry as public domain. Such action undoubtedly would raise strong opposition in the various localities affected and have an undesirable bearing on the new Indian legislation. 54 I.D. 559, 560 (1934).

Thus, the uncertain-sum arrangement in issue here clearly did not play a crucial part in this decision. Except for the "interest of the public," the Opinion could have included the remaining surplus lands of any reservation heretofore opened including the original Lake Traverse Reservation in issue in *DeCoteau*. A departmental policy decision, not a legal one, guided the Department in rendering this Opinion.

Four years after the Department issued the temporary withdrawal opinion, the Secretary of Interior, at the instance of the Commissioner of Indian Affairs, requested a more formal opinion on the status of the remaining surplus lands of the "heretofore opened" Ute Reservation ceded in 1880 which was also included in the initial list. In this Opinion, the Acting Solicitor removes the basis of the current position of the United States:

In my judgment, *even if the reservation of the Confederated Bands of Utes was held no longer to exist*, that fact alone would not negative the

application of section 3 of the Indian Reorganization Act to the remaining undisposed of lands of that reservation. The phrase "of any Indian reservation" must be used in section 3 to describe the character and location of the lands *at the time they were opened* to disposal under the public land laws. The lands which may be restored to tribal ownership must be lands which were part of any Indian reservation, not of any forest or military reservation or of any other class of lands. Section 3 cannot mean that the lands must *now* have the character of Indian reservation lands, *as they are not reservation lands* but lands capable of being restored to reservation status under the Indian Reorganization Act. *Nor can section 3 mean that the lands must be located within the geographical limits of an Indian reservation.* R. App. 118.

Therefore, in 1938 even the Department made clear that neither the 1934 Indian Reorganization Act nor any of the restoration orders issued pursuant to it had anything to do with reservation boundaries *per se* or the issue that is now before this Court.

On a related point, Respondents are cognizant that a Restoration Order issued pursuant to the 1934 Indian Reorganization Act was cited by this Court in *Seymour*. This Restoration Order may have been of some significance in *Seymour* because the State of Washington had to maintain that the entire Colville Reservation did not exist. For Congress to recognize and add certain parcels of land to a reservation that Washington maintained did not exist at all, may have seemed somewhat incongruous to the Court. However, this is definitely not the situation in the instant case. The Rosebud Reservation [Todd County] has never been disestablished and as such, a congressional recognition of a Rosebud Reservation in 1934 would be probative of nothing. Moreover, in the 1938 Restoration Order included by *Amicus* United States in the Appendix to its brief at 33A, certain land in Mellette County was "added to and made a part of the existing reservation, subject to any valid existing rights." If as *amicus* United States and Petitioner claim, all

of Mellette County was still within the boundaries of the Rosebud Reservation in 1938, then the land would have already been "part of the existing reservation." Moreover, other Restoration Orders alternately refer to the same areas as "within" the "boundaries" of the "former" Reservation (Restoration Order of Oscar L. Chapman, Assistant Secretary of the Interior, June 12, 1941) in this respect, confirming the substance of the 1938 opinion.

Another aspect of the 1938 opinion removes a crucial underpinning of Petitioner's entire position. The Acting Solicitor was not unaware of the fact that the use of the uncertain-sum method of payment resulted in a lingering beneficial interest. Unlike *Petitioner* and *amici*, however, he found no connection between this lingering interest and reservation boundaries. In fact, he goes on to discuss several examples wherein this lingering interest remained in land unquestionably outside the boundaries of a reservation following the opening and disestablishment of that part of the reservation or portion thereof by Congress. The first example listed was this Court's decision of *Ash Sheep Company v. United States*, 252 U.S. 159 (1920) and the act discussed therein.

In *Ash Sheep* the Court was presented with the question of whether the Crow Tribe retained a lingering beneficial interest in surplus lands which it had *ceded* under a 1904 act that contained the uncertain-sum provision. The Court held that this beneficial interest did exist *until* the lands were filed or settled upon. *Ash Sheep*, *supra* at 166. Significantly, the nature of this lingering beneficial interest did not, however, alter the fact that the 1904 act which recited and ratified the Crow cession effectively *disestablished* the surplus area so ceded from the Crow reservation.

The Court in *Ash Sheep* did not directly address this aspect of the cession question. It was made clear on the face of the Act. Because the area to be ceded could not be described by means of county subdivisions, *new boundary lines* were mentioned in the act in no less than five separate places. Act

of April 27, 1904, 33 Stat. 352, 359, 360. Section 4 is an example of the language employed therein:

SECTION IV. That for the purpose of *segregating the ceded lands from the diminished reservation, the new boundary lines* described in Article I of this Agreement shall when necessary be properly surveyed and permanently marked in a plain and substantial manner by prominent and durable monuments, the costs of said survey to be paid by the United States. Act of April 27, 1904, 33 Stat. 352, 355.²²

Thus, in its opinion, the Court simply noted:

The agreement embodied in this act of Congress provided for a division of the Crow Indian Reservation in Montana on *boundary lines* which were described, and the lands involved in this case were within the part of the reservation as to which the Indians, in terms, 'ceded, granted and relinquished' to the United States all of their 'right, title, and interest.' *Ash Sheep Company*, *supra* at 164.

The 1904 Crow Act involved the uncertain-sum arrangement, and it was intended and did effectively disestablish the ceded surplus portion of the reservation.

The *Ash Sheep* decision and the Great Sioux Act make clear that the lingering beneficial interest is not incompatible with, or even related to, reservation disestablishment. The 1938 Opinion further shows that no such relationship is supplied by the question of whether lands in which there is a lingering interest are "public lands" or "Indian lands." In this respect the Opinion explains that lands are simultaneously qualified public lands and qualified Indian lands. The Opinion offers this analysis which was also accepted and followed by Felix Cohen, *supra*, p. 335:

the result is that the Indians retain an equitable interest in the land until they have received the consideration bargained for, and the United States becomes a "trustee in possession."

²² It is interesting to note that, again in this instance, the diminished reservation terminology could only have meant diminished reservation boundaries. In addition to the support for this position, set forth through this brief, Respondents would also point out the similar use of the term by this Court in *Seymour and DeCoteau*. See also the agreements cited in *DeCoteau*, *supra* 439 N. 22.

Surplus ceded lands to be disposed of for the Indians are frequently referred to in acts of Congress and departmental actions both as public lands and Indian lands. . . .

In the act of Congress dismembering the Great Sioux Reservation, a provision that the unreserved lands shall be restored to the public domain is used in two places with obviously different meanings. In section 21 it is provided that the unreserved land shall be "restored to the public domain" to be disposed of to actual settlers only, the proceeds to go to the Indians. However, it is then provided that if the lands are not disposed of at the end of 10 years, they shall be paid for by the United States at a designated rate, and that the lands so purchased should then become "a part of the public domain." The first provision restoring the lands to the public domain could have had no legal effect to alter the equitable interest of the Indians in the land until sold or purchased by the United States.

Surplus lands ceded to be disposed of for the Indians are in fact qualified public lands and also qualified Indian lands. They are public lands in that the United States has the legal title and has secured from the Indians a release of their right of occupancy and has arranged to dispose of them, but they are not public lands in the full sense of the term as they are to be disposed of only in limited ways and upon certain conditions. It should be noted that both the 1880 and 1882 acts concerning the Ute land qualified the reference to the land as public land and subject to disposal under the public land laws by stated conditions and restrictions.

Surplus lands are also properly designated as Indian lands in view of the interest of the Indians in the proceeds of any disposal of the lands. This equitable interest is the significant condition attached to the lands which distinguishes them from the public lands generally as Indian lands. R. App. 123-24.

Thus the lingering beneficial interest is not related to, nor incompatible with, reservation disestablishment. Moreover, it does not prevent restoration of reservation areas to what is, in essence, the public domain.

In conjunction with the above 1934 Act arguments Petitioner and *amici* also cite Sec. 8 of the 1934 Act as additional evidence that the three Rosebud Acts could not have been intended by Congress to disestablish portions of the original Rosebud Reservation. Building on this point, Petitioner then sets forth "accrued taxes" and "lost allotments" as part of the "calamitous" results which would follow unless the Court reestablished the boundaries of the original Rosebud reservation. Initially Respondents would point out that Section 8 was directed only to "Indian allotments or homesteads" and concerned other sections of the 1934 Act and not the status of the surplus lands of "reservations heretofore opened."

Secondly, even in the abstract, the 1934 Opinion, *supra*, makes clear that the allotments of the Lake Traverse Reservation and others similarly located could be equally within the purview of Petitioner's argument. Since for all practical purposes all of the area affected by the three Rosebud Acts has been treated since the Acts as being outside the Rosebud Reservation, neither the argument nor the alleged results have any basis in reality.

If the uncertain-sum characteristic was the distinguishing factor, the 1934 Indian Reorganization Act Opinion and Petitioner's Table (R. App. 4a) should have included every uncertain-sum Act ever passed by Congress. At least 43 separate statutes of this type have been listed in the National Indian Law Library, Boulder, Colorado. N. I. L.L. No. 002279. Following Petitioner's argument to its logical conclusion would lead to the re-establishment of reservations within reservations — the same result that would have occurred had this Court accepted the similar generalized arguments advanced in *DeCoteau*.

Finally, although Respondents are not in a position to verify the current and accepted jurisdictional history of even the thirty statutes listed in the 1934 Opinion, striking differences exist among the acts and reservations listed. For example, included in the list in the Opinion is the Uintah and

Ouray Reservation and the Act of March 27, 1902, 32 Stat. 263. This Act, which placed the Uintah and Ouray Reservation in the "heretofore opened" reservation status *on its face* directed that "all the unallotted lands within said reservation shall be restored to the public domain." Act, *supra*. Mattz, *supra* at 504, N. 22. The language and the jurisdictional history of other "heretofore opened" reservations in the same list such as the 1880 Ute Act in Colorado, and others in South Dakota, and Wyoming are equally uncertain. In 1934, at least certain of these remaining surplus lands were not then within the boundaries of any reservation. At the same time, the opposite might be true in other instances listed, but this is not the point. As reliable indicia of the issues presented herein, the 1934 Indian Reorganization Act and the 1934 Departmental Opinion issued pursuant thereto are not acceptable.

D. The Definition of Indian Country: 18 U.S.C. § 1151.

In order to cover fully the post-1910 materials, there must be a discussion of 18 U.S.C. § 1151 and its implications for this case. Both Petitioner and several *amici* have raised the issue of "checkerboarding" in their briefs.

Respondents have waited until this point to discuss the implications of the 18 U.S.C. § 1151 for the reason that here as in *DeCoteau*, it is not until after this Court has examined the legislative materials that a consideration of 18 U.S.C. § 1151 becomes relevant.

The definition of Indian Country is set forth at 18 U.S.C. § 1151:

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state,

and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. June 25, 1948, c. 645, 62 Stat. 757; May 24, 1949, c. 139 § 25, 63 Stat. 94.

Only subsections (a) and (c) are relevant to the issues presented herein.

1. 18 U.S.C. § 1151(a): Jurisdiction Within The Limits of Any Indian Reservation.

In 1948 when the definition of Indian Country was revised to its present form, it was the almost unanimous conclusion of all state and federal courts that "opened reservations" were not reservations at all. Rather, this terminology denoted areas which were once reservations but had been disestablished by special acts of Congress.

In Rosebud, with each opening of a portion of the Rosebud Reservation, the Act, its legislative history and its surrounding circumstances demonstrate that the boundaries were necessarily reduced to encompass the area remaining or the diminished reservation — in this instance Todd County. The disestablished area was no longer within the boundaries of the Rosebud Reservation, although it continued in some instances to be improperly referred to as the "opened reservation," similar to the improper "opened" references regarding the Sisseton-Wahpeton Reservation. The trust allotments situated on the "opened" portions were interspersed among the fee land of the homesteaders after the opening of the area to settlement and were outside the boundaries of the reservation.

In the beginning, the trust allotments within the boundaries of the reservation [Todd County] were interspersed among the rest of the undivided tracts of trust land held in common by the Rosebud Sioux Tribe. However, after a period of time, the United States no longer held the title to all the area within Todd County in "trust." Primarily this situation was the result of allotment pursuant to Section 6 of the General Allotment Act and the eventual issuance of some patents in fee to individual members of the tribe. In most in-

stances, title to the land was then transferred to another person — sometimes a member of the tribe and sometimes not. This whole process soon resulted in the “checkerboarding” of fee and trust land *within* the diminished reservation. The jurisdictional ramifications soon resulted in a hotly contested issue in many of the state and federal courts. In 1948, Congress resolved the issue by defining Indian Country, in part, as

(a) [A]ll land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation . . . 18 U.S.C. § 1151.

Of particular note to the issue before this Court is the fact that when the above section was passed by Congress, Todd County was the specific example cited.

In effect, Congress codified the decisions of those courts which had previously resolved the issue consonant with that definition. The general definition of Indian country was still based upon the latest construction of the term by this Court in *United States v. McGowan*, 302 U.S. 535 (1938), a situation in which the United States retained the title to all of the land which it validly set apart for the use of the Reno Colony in Nevada. With reference to the checkerboard issue, the Reviser’s Note cited with approval and reliance the 1943 Todd County decision of *Kills Plenty v. United States*, 133 F.2d 292 (CA 8 1943), *cert. den.* 319 U.S. 759 (1943). See Reviser’s Note, 18 U.S.C. § 1151.

In *Kills Plenty* the Eighth Circuit Court of Appeals held that all of the land within Todd County was “Indian country” regardless of the issuance of patents in fee. Todd County was the only county of the original Rosebud Reservation that had never been “opened” to settlement. Todd County was for all purposes the Rosebud Reservation, and was sometimes referred to as the diminished Rosebud Reservation in acts of Congress, opinions of state and federal courts, the Office and Bureau of Indian Affairs, and maps from 1910 until 1970. In 1948 other areas that were once reservations but were subse-

quently affected by special acts intended by Congress to disestablish portions of reservations were not considered to be within the boundaries of reservations or under the jurisdiction of the federal government. Indeed, no one can read the *Kills Plenty* decision and the cases cited therein and reach a contrary conclusion. This was the virtually unanimous view in 1943 of state and federal courts.

It is interesting to note that the 1922 decision of *United States v. Frank Black Spotted Horse*, 282 F. 349 (D.S.D. 1922), cited by Justice Black with approval in *Seymour* dealt with the same particular Todd County checkerboard problem resolved by the court in *Kills Plenty*. The court in *Frank Black Spotted Horse* resolved the issue in the same manner that was later followed in *Kills Plenty*. The *Kills Plenty* decision cited by the Revisor with approval, eliminated as a practical matter the Section 6 pattern of checkerboard jurisdiction in the only area of the Rosebud Reservation which existed at that time.

2. 18 U.S.C. § 1151(c): Allotments on the Public Domain.

In 1948, Congress knew that the definition of Indian Country set forth in 18 U.S.C. § 1151(a) would not encompass those trust allotments on the public domain in areas of what had formerly been reservations. As a result, 18 U.S.C. 1151(c) was set forth as an addition to the definition of Indian Country.

(c) [A]ll Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Logically, to support the continuation of these allotments as Indian Country, the Revisor cited the decision of this Court which held that an allotment on the public domain in the opened area of what had previously been a reservation should continue to be subject to federal jurisdiction:

Indian allotments were included in the definition on authority of the case of *U.S. v. Pelican*, 1914, 34 S. Ct. 396, 232 U.S. 442, 58 L.Ed. 676. Eightieth Congress House Report No. 304, Reviser’s Note, 18 U.S.C. § 1151.

In *Pelican*, cited with approval in *DeCoteau* at 447, this Court held that federal jurisdiction was not extinguished merely because a trust allotment had been left behind on the public domain when a reservation was "diminished" after an opening of a portion of that reservation. Specifically, this Court in *Pelican* was involved with the 1892 opening of the north half of the Colville Reservation which disestablished approximately one-half of the Colville Reservation. To this extent, 18 U.S.C. § 1151(c) specifically approved and provided for limited checkerboard jurisdiction. Some provision had to be made for the numerous Section 5 surplus land statute openings which had left behind trust allotments situated on the public domain outside the boundaries of a reservation. Respondents would submit that this provision, 18 U.S.C. § 1151(c) is precisely tailored to fit the situation in the areas affected by the Rosebud Acts. *This is the only section of 18 U.S.C. 1151 that has been or was intended to apply to Gregory, Tripp, Lyman and Mellette Counties.* This conclusion is specifically supported by the Eighth Circuit decision in *Beardslee v. United States*, 387 F.2d 280 (CA 8, 1967).

Beardslee involved essentially the same Todd County issue that had been presented in *Kills Plenty* and *Frank Black Spotted Horse* and the same result followed, i.e., the absence of checkerboard jurisdiction inside the diminished reservation. *Beardslee* was decided after the *Seymour* decision and specifically mentioned Gregory, Tripp, Lyman and Mellette Counties:

The Rosebud Reservation was established by, and is described in, Section 2 of the Act of March 2, 1889, 25 Stat. 888. The boundaries of Todd County, in which the town of Mission is located, are laid down in S.D. Code, Section 12.0162 (1939). All of Todd County is obviously within the original boundaries of the Rosebud Reservation. Only three Acts of Congress have affected the territory of the reservation since its establishment in 1889 and none of these concern Todd County. Act of April 12, 1904, 33 Stat. 254; Act of March 2, 1907, 34 Stat. 1230; Act of May 30, 1910, 36 Stat. 448. No part of the Todd County portion of the reservation has ever

been formally opened. Instead, that portion has remained closed since 1889. *The general geographical situation is thus clear.* 387 F. 2d at 285.

More importantly, the opinion referred to "a disestablished portion of the reservation, however that disestablishment may have been effected," (387 F. 2d at 286), and specifically stated that:

... Clause (c) came into the statute as the result of the holding in *United States v. Pelican*, 232 U.S. 442, 34 S. Ct. 396, 58 L. Ed. 676 (1942), namely, that lands allotted to Indians remained within the definition of Indian country even though the rest of the reservation was opened to settlement. See Reviser's Note following 18 U.S.C.A. § 1151 (1966), and 80th Congress House Report No. 304. Clause (c) is an addition to and not a limitation upon the definition of Indian country embraced in the preceding portions of § 1151. *We regard clause (c) as applying to allotted Indian lands in territory now open and not as something which restricts the plain meaning of clause (a)'s phrase "notwithstanding the issuance of any patent."* Although this result tends to produce some checkerboarding in non-reservation land, it is temporary and lasts only until the Indian title is extinguished. The congressional purpose and intent seem to be clear. *Beardslee*, *supra* at 287.

Nice, *Frank Black Spotted Horse*, *Kills Plenty*, and *Beardslee*, are the only cases wherein the Eighth Circuit has been presented with a question involving Indian jurisdiction on the Rosebud Reservation. One cannot read these opinions without concluding that Gregory, Tripp, Lyman and Mellette Counties were simply not considered to be within the limits of the Rosebud Indian Reservation.²³

23. In addition to the *Nice*, *Frank Black Spotted Horse*, *Kills Plenty*, 18 U.S.C. 1151(a) and *Beardslee*, the enactment of liquor prohibition legislation narrowing 18 U.S.C. 1151(a) in 1949 also substantiates that Gregory, Tripp, Lyman and Mellette were not considered to be within the reservation and that Todd County was considered to be the entire reservation. In that year, the law prohibiting the introduction of alcoholic beverages within reservations was amended to exclude fee-patented land within "non-Indian communities" and "rights-of-way" through reservations. See, generally *United States v. Mazurie*, 419 U.S. 544, 547 (1975) which presented a reservation fact situation corresponding to Todd County. Just as Todd County had

Some checkerboarding is inevitable. The necessary result of 18 U.S.C. § 1151(c) and this Court's decision in *DeCoteau* was limited checkerboard jurisdiction on the former Sisseton-Wahpeton Reservation.

The court in *Beardslee* correctly interpreted 1151(c) as applying only to "non-reservation" situations. Section 1151(c) specifically acknowledges limited checkerboard jurisdiction. The Revisor's Note and the House Report stated that "Indian allotments were included in the definition on authority of the case of *United States v. Pelican*." The *Pelican* case had specifically held that after the reservation had been diminished, the allotments outside that diminished reservation were still Indian Country and would remain Indian Country until Indian title had been extinguished.

Although in *Seymour*, Justice Black discussed at some length the problems of checkerboarding, he was concerned only with the rejection of checkerboard jurisdiction *within* the boundaries of a reservation. *Seymour*, *supra* at 358.

played a role in the enactment of the 1948 18 U.S.C. 1151(a) definition of Indian country via the *Kills Plenty* decision, the city of Mission, in Todd County, played an important role in the 1949 liquor prohibition legislation. In fact, the legislative history of this enactment reveals that Mission was the moving force behind the legislation. The City of Mission was clearly Indian country under 18 U.S.C. 1151(a) and it desired to be excepted insofar as the liquor prohibition was concerned. A series of correspondence on behalf of the city between South Dakota Governor M. Q. Sharpe and South Dakota Senator Chan Gurney, eventually resulted in the exception enactment of May 24, 1949, 63 Stat. 94. The official correspondence contrasts on the basis of the location of the boundaries of the Rosebud Reservation, the City of Mission and Todd County with the cities of Winner and Carter in Tripp County.

The alleged possession or introduction of intoxicating liquor was upon a town lot in the incorporated town of Mission in Todd County, South Dakota, which is on all sides surrounded by the exterior boundaries of the present Rosebud Indian Reservation.

Letter of November 2, 1948, from Governor M. Q. Sharpe to the U.S. District Attorney for the District of South Dakota.

[In contrast to Todd County, which is the Rosebud Indian Reservation, liquor can be purchased at Valentine, Nebr., Winner or Carter [Tripp County], South Dakota.

Letter of August 26, 1948 from Governor M. Q. Sharpe to Bob Devaney, Assistant to Senator Chan Gurney.

Obviously, Todd County was the Rosebud Reservation. Neither this liquor prohibition nor any other federal statute which depended for its application upon the existence of reservation boundaries has ever been deemed applicable to Tripp, Gregory, Mellette and Lyman counties since the Rosebud Acts.

In situations controlled by 1151(c), federal jurisdiction does not depend upon the existence or nonexistence of a reservation. In these situations, law enforcement officers would still theoretically have to "search tract books" and to this extent limited checkerboard jurisdiction has not been avoided by the language of Section 1151. *DeCoteau*, *supra* at 446-447.

In terms of the practical considerations of checkerboard jurisdiction in the area in issue, there is no necessity for "tract book justice," contrary to the position of Petitioner and *amici*. The vast majority of all crimes committed by the ten percent of the population who are members of the Rosebud Sioux Tribe, misdemeanors and felonies alike, are committed on non-trust land in populated areas. In fact, only ten percent of the total area even remains in trust and most of this trust land consists of grazing lands far removed from any populated area. The incidence of any crime on land of this character is negligible. Thus this limited degree of mixed jurisdiction has presented no serious problem to law enforcement in Gregory, Tripp, Mellette or Lyman Counties over the past 60 years.

Petitioner and *amici* can point to no specific Rosebud cases in which checkerboard jurisdiction has been a practical problem in the area in issue. Similarly, checkerboard jurisdiction within the boundaries of the former Sisseton-Wahpeton Reservation has also created no serious problems on a practical level either during the 80 years before the *DeCoteau* decision or since that decision.

E. The Treatment of the Open Area by the Tribe and the Bureau of Indian Affairs.

As the Supreme Court of South Dakota noted in a recent case that presented the question of whether that portion of the original Rosebud Reservation situated in Tripp County was disestablished by the 1907 Rosebud Act: "The State of South Dakota has exercised criminal and civil jurisdiction over the years *with the full acquiescence of all responsible*

federal authorities. *State v. White Horse*, 231 N.W. 2d 847 (S.D. 1975).

In light of the clear expression of congressional intent to disestablish portions of the Rosebud Reservation and subsequent treatment, it is not surprising that except for administrative details related to the existence of trust land located within Gregory, Tripp, Lyman and Mellette Counties, the Rosebud Sioux Tribe and the Bureau of Indian Affairs have until recently acted, considered and treated those counties as being outside and not a part of the Rosebud Reservation.

The most telling recent example of this are the circumstances surrounding the attempt of Lawrence Antoine to run for tribal president of the Rosebud Sioux Tribe in 1967. Mr. Antoine's petitions were refused when presented for filing on the ground that since he lived in Tripp County he was not a resident of the reservation. On advice of present Washington Counsel, the Tribe refused to accept his petitions because he was not a resident of Todd County which constituted the Rosebud Reservation. Therefore, the Tribe, while allowing a few isolated Indian communities outside of Todd County to have some representation on the tribal council, did not permit any non-resident of Todd County, i.e., someone who did not live on the Reservation, to hold the office of tribal president.

Similarly, the members of the Tribe living in Gregory, Tripp and Mellette Counties have consistently been refused the benefits from the commodities, relocation, head start, war on poverty and other similar programs. Such programs were only available to residents of Todd County or to members of the Tribe outside of Todd County living on trust land. If tribal members lived on fee patent land outside Todd County, they were referred to state and local social service agencies for similar programs.

In the late 1960's, the South Dakota Legal Services Program was active in creating a city housing authority in the City of Winner, Tripp County, so that tribal members living

in Winner could have decent housing. The BIA and the Tribe refused to build any housing projects which were not located either in Todd County or on Indian trust land in the other four counties. It is difficult to square the Tribe's actions in this regard with their current claim that all the areas opened by the three Acts in question remain within the boundaries of the Rosebud Reservation.

Fortunately, this denial of benefits and programs to tribal members living on fee-patent land in area in issue has been remedied by the holding by this Court in *Morton v. Ruiz*, 415 U.S. 199 (1973), that such benefits and programs shall be made available to tribal members living "on or near" the reservation. Thus, the question of disestablishment presented by this case should have scant effect on the ability of the Tribe and the Bureau of Indian Affairs to provide to all members of the Tribe the benefits and programs discussed by *Amicus Association on American Indian Affairs, et al.*

III

A VIABLE REASON TO ALTER WHAT HAS BEEN FOR OVER 65 YEARS, THE ESTABLISHED AND FUNCTIONAL INTERRELATIONSHIP OF THE ROSEBUD SIOUX TRIBE, THE FEDERAL GOVERNMENT AND THE STATE OF SOUTH DAKOTA DOES NOT EXIST.

Respondents have consistently taken the position that the three Rosebud acts disestablished portions of the Rosebud Reservation. Since the passage of those acts, members of the Rosebud Tribe, the State of South Dakota and the United States government have all consistently recognized and treated the area opened by those Acts as having been disestablished from the Rosebud Reservation. As has been shown *supra*, Petitioner's and amici's attempts to portray the subsequent legislative and administrative treatment of these areas as being a portion of the Rosebud Reservation is untenable. The effect of the decisions of the courts below has been to preserve the status quo and the understanding of the

Tribe, the State of South Dakota, the United States government and citizens located in the areas in question.²⁴

Significantly, members of the Rosebud Tribe have always, until very recently, treated the area in issue as being outside the Rosebud Reservation. The Tribe clearly realized that the Rosebud acts had disestablished portions of their original reservation. This realization for over 65 years has permeated every aspect of the interrelationship between members of the tribe and the state and local governments located in the area in issue. Similarly, the federal government has made an identical distinction between tribal members who reside either on trust land or in Todd County and those tribal members who reside on non-trust land outside of Todd County. This distinction has a rational basis only if the three Rosebud acts disestablished portions of the original Rosebud Reservation.

Since the early 1910's, the State of South Dakota and its local government subdivisions have been for all practical purposes the only governmental authority which has existed in the areas in question. The State of South Dakota and its local government units have provided the only general governmental services and law enforcement to this area. In Todd County, the Rosebud Sioux tribe has an existing tribal government which provides general government benefits and services for its members. The tribal government consists primarily of a tribal president and a tribal council, both of which are elected by a vote of tribal members only. While the exact powers of the tribe are not in litigation at this time, some mention of the scope of tribal powers and jurisdiction should be made since if this Court is to reverse the decision below, those powers will be exercised over the opened areas for the first time in over 65 years.

Petitioner provided a short list in its complaint consisting of these five powers: (1) criminal jurisdiction; (2) civil jurisdiction; (3) sales tax authority; (4) tribal taxing authori-

24. Area residents are circulating a petition that contains a declaration to this effect. The signatures of both non-Indians and Indians alike attest that, within memory, the residents of the area in issue know only Todd County as the Rosebud Reservation.

ty; and (5) tribal regulation of intoxicants. In light of the fact that South Dakota is not a Public Law 280 State, the resurrection of original reservation boundaries is not without serious consequence. Moreover, unfortunately unique law and order problems prevalent on South Dakota reservation in recent years have presented a fact situation to which the present federal and tribal system of law enforcement cannot adjust. This is especially true of the Rosebud Reservation. As the Chief Judge for the United States District Court, District of South Dakota, stated in a recent television news interview less than three months ago:

The big jump in case load came in 1973 — the Wounded Knee takeover — and it's been climbing ever since. Mostly because of increased crime on the State's Indian reservations.

South Dakota has had a greater increase in filings in federal cases, both civil and criminal, from 1970 to 1976 of any other district within the seven states within the Eighth Circuit Court of Appeals. Pine Ridge used to have the largest filings for criminal cases. *Now it's Rosebud.* I don't quite understand why that's true, but that's what it seems to be right now.

Interview with
Chief Judge Fred J. Nichol,
August 11, 1976, KELO-TV,
Sioux Falls, S. Dak.

At the same time, within the past two years, the Rosebud Sioux Tribe has enacted two important ordinances. The first ordinance asserts *complete* civil and criminal jurisdiction over *all* persons within the original boundaries of the Reservation. The second ordinance asserts the right to *remove* to the original boundaries of the Reservation *any* person deemed "socially undesirable." Although the tribal court has not issued any orders to date under the second ordinance, it does routinely issue and attempt to act on arrest warrants for non-members, felonies and misdemeanors alike, pursuant to the first ordinance. This is the same tribal court that issued an

order purporting to restrain the entire Federal Bureau of Investigation from executing federal felony arrest warrants anywhere within the same boundaries. Only the fact that a Todd County court case which challenges this assertion of jurisdiction over non-members on constitutional grounds is now pending in the United States District Court has prevented the upheaval that would follow such an exercise of jurisdiction by the Tribe even if it were limited to present Reservation.

In addition, tribal authority over zoning and development of natural resources and other areas is presently unclear. None of the above powers are trivial and would, if the lower court decisions are reversed, be exercised by the Tribe, a governmental unit in which the vast majority of the residents of Tripp, Gregory and Mellette Counties are not eligible to vote or otherwise participate in any manner whatsoever.

The State of South Dakota and its local government units have not been restricting or interfering with the ability of the Tribe to maintain essential tribal relations. The internal affairs of the Tribe remain and have remained the internal affairs of the Tribe only. Indeed, the recent decision in *Morton v. Ruiz* has expanded the Tribe's geographical area in terms of provision of services and benefits, although not with respect to jurisdiction and authority. Maintenance of the Tribal relationship does not require a resurrection of the original boundaries of the Rosebud Reservation. This tribal government and relationship will continue regardless of the Court's decision in this case.

For the Tribe in reservation areas to subject non-members to general tribal jurisdiction, special trader's licenses, taxes for the right to do business on the reservation, special statutes regulating intoxicants, professional competency certifications for the right to practice law or medicine or any other profession in a tribal hospital, court of law or whatever, or exercise any sovereignty which the tribe might lawfully exercise within the boundaries of its reservation today or 50 years from today is one thing. It is one thing to choose to

reside within the boundaries of a reservation. However, to subject the thousands of citizens who live within the area affected by the three Rosebud acts, to the same sovereign powers for the first time in 1976 is quite a different matter. Certainly to take such a drastic step, after 65 years of history in which the State of South Dakota and its local government units have exercised jurisdiction and general governmental powers over this area, is unwarranted.

In the area in question, only 10 percent of the resident population are enrolled members of the Rosebud Sioux Tribe and less than 10 percent of the land remains in trust. As in *DeCoteau*, Respondents have exercised unquestioned jurisdiction over the unallotted land of the former reservation in these counties for over 65 years. In contrast, Todd County, the Rosebud Reservation, is predominantly populated by tribal members living on trust land. The state does not interfere with the Tribal right of self-government within Todd County and its exercise of jurisdiction over the areas in issue certainly does not result in the infringement of "the right of reservation Indians to make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 217 at 220.

In addition to subjecting the individuals in the opened area to the sovereign power of the Tribe, when one considers the related loss of the inherent power of state and local government to regulate drivers licenses, license plates, motor vehicle safety inspections and other related regulatory provisions, misdemeanors, repeated offenses such as driving while intoxicated which are not felonies or even crimes under the Federal statutes, in an area where for all practical purposes neither the Tribe nor the federal government has ever provided adequate law enforcement protection for either tribal members or non-members, the effect of a reversal of the lower court's decision cannot be underestimated. The general welfare of tribal members living within the area in issue is not dependent upon the resurrection of the original boundaries of the Rosebud Reservation.

Many citizens of the United States, both members of In-

dian tribes and non-members, have elected to live within the boundaries of a reservation. They have knowingly decided to subject their lives and property to the many special Federal and tribal laws on such reservations. This choice presumably has been made with a realization as to the consequences of the choice. This would not be the case if this Court were to reverse the decision below. Fortunately, the clarity with which Congress expressed its intent to disestablish portions of the Rosebud Reservation when it opened them to settlement by passage of the 1904, 1907 and 1910 acts does not require such a reversal of the lower court's decision.

CONCLUSION

Congress' intent when it passed the 1904, 1907 and 1910 Rosebud Acts was to disestablish the portions affected by each of those Acts from the Rosebud Reservation. This intent is clear from the text of the act, the legislative history and circumstances surrounding each of those Acts. These acts must be viewed from the historical perspective in which the familiar forces of Section 5 of the General Allotment Act provided the fundamental basis for federal Indian policy. For the reasons set forth above, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

William J. Janklow
Attorney General for South Dakota

William F. Day, Jr.
Attorney for the Four Counties

Tom D. Tobin
David L. Knudson
Special Assistant Attorneys General

Attorneys for Respondents

October, 1976

NOV 16 1976

MICHAEL RODAK, JR., CLERK

APPENDIX FOR RESPONDENTS

IN THE
Supreme Court of the United States

October Term, 1976

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

WILLIAM J. JANKLOW
Attorney General
State of South Dakota
Pierre, South Dakota 57501

WILLIAM F. DAY, JR.
Attorney for the Four Counties
Winner, South Dakota 57580

TOM D. TOBIN
Special Assistant Attorney General
Winner, South Dakota 57580

DAVID L. KNUDSON
Special Assistant Attorney General
Sioux Falls, South Dakota 57102

Attorneys for Respondents.

TABLE OF CONTENTS

Entry #	Page
#13B McLaughlin Report to Secretary of Interior dated August 31, 1903	1
#15E Proclamation of May 13, 1904, 33 Stat. 2354	6
#19A Senate Report No. 2760	16
#19B Senate Report No. 4198	19
#20A 40 Cong. Rec. 3460-65	11
#21B McLaughlin report to Secretary of Interior dated Feb. 12, 1907	46
#22E Proclamation of August 24, 1908, 35 Stat. 2203	50
#34B McLaughlin report to Secretary of Interior dated April 29, 1909	54
#35E Proclamation of June 29, 1911, 37 Stat. 1691	57
#42A Instructions to Inspector McLaughlin dated May 22, 1911	62
#42B McLaughlin report to Secretary of Interior dated November 3, 1911	62
#42C Letter from Secretary of Interior to Senator Gamble, 1911	67
#48A Petition of Rosebud Sioux Indians to the Commissioner of Indian Affairs dated February 18, 1914	68
#57 Proclamation of April 11, 1892, 27 Stat. 1017	72
#58 Act of March 2, 1889, 25 Stat. 888	75
#58A Proclamation of February 10, 1890, 26 Stat. 155	98
#58B General Allotment Act, C. 119, 24 Stat. 389 (1887)	104
#59 Department of the Interior decision, 56 I.D. 330, (June 15, 1948)	114
#60 Patent of Gustav Gnirk, Dec. 5, 1910	128

[#13B]

McLaughlin report to Secretary of Interior
dated August 31, 1903

DEPARTMENT OF THE INTERIOR

Omaha, Nebraska, August 31st, 1903

The Honorable,
The Secretary of the Interior.

Sir:

I have the honor to report result of my negotiations with the Indians of the Rosebud Reservation, S. D., for the cession of their unallotted lands in Gregory County, South Dakota, as directed by Department letter of the 3rd ultimo, which enclosed for my guidance instructions prepared in the Office of Indian Affairs, dated June 30th, 1903.

My first council with the said Indians in relation to the cession was held at the Rosebud Agency on the 24th ultimo, and on the following day I submitted and carefully explained to them Senate Bill No. 7390, (Fifty-seventh Congress, Second Session), as directed. The Indians were opposed to several provisions of the bill from the beginning, and their consenting to consider it was only from their desire to appear courteous by giving at least perfunctory consideration to that submitted to them by the Department. They were unanimous in refusing to assent to the bill presented, and whilst a majority of the speakers demanded \$5.00 per acre for the land embraced in the proposed cession, others expressed a willingness to enter into an agreement along the lines proposed in the bill, provided certain of its provisions were modified.

There was considerable difficulty in prevailing upon the Indians to remain in council to discuss the proposition, but I succeeded in having each adjournment provide for

reassembling at a certain time, that their principal objections to the bill might be thus ascertained. After several sessions had been held and becoming satisfied that certain modifications would have to be made to be acceptable to the Indians, I suggested that certain changes, which would meet their wishes, might be brought about, and outlined the modifications which I thought might be affected; whereupon they asked that the council might be adjourned one week, that they might return to their homes and discuss the matter among themselves at the headquarters of their respective districts; which request was granted.

Upon reassembling August 7th, I told them of the modifications which I had concluded to make, and would prepare a written agreement embracing the proposed changes and submit it to them on the following day, which, if concurred in by them, would be immediately ready for their signatures.

On August 8th I submitted the agreement, herewith transmitted, and explained it to the assembled Indians with the utmost care.

There were from 350 to 400 Indians present at this council, and after some discussion among themselves, they asked for an adjournment until the following Monday, August 10th, that they might council among themselves as to whether they would accept the new agreement as prepared or not. There were quite a number of Indians present whom I knew were ready to sign the agreement then and there, but I deemed it more advisable to comply with the request of the speakers, and gave them until Monday to consider the question.

Upon reassembling on Monday, August 10th, there were only about 75 Indians present, and I perceived that they were chiefly persons who were opposed to any agreement which did not provide for \$5.00 per acre for the entire ces-

sion, and upon inquiry I learned that those favoring the agreement, which I had submitted to them the previous Saturday, had returned to their homes, but before leaving had directed Good Shield, lieutenant of the Agency police, to inform me that they were ready to sign the agreement at any time, but would prefer doing so when I reached their respective district headquarters.

At the beginning of this last general council there were, as before stated, about 75 Indians assembled, but others continued to come in during the council until about 125 were present. After considerable controversy I signed the agreement and invited those assenting to come forward and sign it; and notwithstanding that the council was dominated by the more active opponents of the proposition, 90 signatures were at once obtained, leaving only about 35 of those present who refused to concur.

This large percentage of the assemblage assenting to the provisions of the new agreement, together with the message delivered me by the lieutenant of police from persons favoring the agreement who had returned to their homes, encouraged me sufficiently to make a tour of the several districts of the Reservation, and meet the Indians of the different settlements at the headquarters of their respective districts. I travelled by team about 400 miles over the Reservation, 100 miles through the districts west of the Agency and about 300 miles in the districts east of the Agency, visiting them in the following order: -- Spring Creek, Upper Cut Meat, Cut Meat Issue Station, Black Pipe, Little White River, Butte Creek, Big White River, Bull Creek and Ponca Creek, -- thus consuming sixteen days, during which time I explained every feature of the agreement at the nine different points above stated, at each of which district headquarters I received quite a number of signatures, a total of 737, which number, whilst being 48 more than half of the male adult Indians of the Reservation, is 296 less than the required three-fourths majority.

I had two elements of opposition to contend with, viz: those of the Indians who were opposed to ceding the tract at any price and those who demanded \$5.00 per acre for the entire cession, and the latter especially were strongly organized and very aggressive.

The minutes of the councils transmitted herewith is a clear record of the several sessions held at the Agency, and shows that the Indians would not assent to the bill presented. The basis of my estimate of the probable amount that would be realized by the Indians from the proposed cession, under the provisions of the new agreement submitted, is shown on pages 34 to 37 inclusive of said minutes.

Since my negotiating the agreement of September 14th, 1901, with said Indians for the identical tract of land, a railroad (the Bonesteel Branch of the Chicago & Northwestern System) has been built through Gregory County up to the eastern line of the Rosebud Indian Reservation, in consequence of which lands throughout that section of country have greatly enhanced in value, one quarter section, situated within a mile and a half of the eastern boundary of the Reservation, having recently sold for \$5,000.00. This quarter section of land is well improved and contains very good buildings, adding much to its present value, but a great demand for lands in that neighborhood and the high price at which farming lands are held there being well known to the Indians, made it impossible for me to conclude an agreement along the lines proposed in the said Senate Bill, for the price per acre which I felt obliged to insist upon under my instructions.

The Agreement which I prepared and submitted to the Indians allowed \$2.50 per acre for the school sections, as provided in the said Senate Bill, and a similar price per acre for three mission tracts, aggregating 198.67 acres and \$2.75 per acre for lands entered under the homestead act, this difference in price being considered just and equitable from

the fact that the school and mission tracts were to be paid for by direct appropriation, the proceeds of which, amounting to \$71768.37, would be immediately available after ratification of the agreement, while the homestead tracts would be paid for in six installments, running for a period of five years, with six months grace for the last payment.

Some of the lands that would remain undisposed of after the agricultural portions would be taken, if sold as provided in said Senate Bill — in tracts not to exceed 160 acres to any one person — could not be disposed of to any advantage, as portions of this proposed cession bordering along the Missouri River are very rough and broken and entirely devoid of vegetation, and they would not likely find a purchaser if purchasers were restricted to tracts of 160 acres only; but by selling this rough land in tracts of 160 acres without restriction as to the number of such tracts the highest bidder might purchase, a number of desirable ranges could be thus secured by stockmen and a much better price for the rough lands be thus obtained, — hence the wording in the last clause of Article IV. of the enclosed agreement.

I did everything in my power to obtain the consent of the requisite number of Indians, and after giving thirty-six days' time to the work, at the Agency and in traveling over the Reservation explaining the agreement at each of the district headquarters, and still lacking 296 signatures, I felt justified in discontinuing further efforts in that direction, and especially as many of the Indians assenting to the agreement did so simply to meet the wishes of the Department.

It is barely possible that by making from house to house canvass, visiting the Indians at their homes, the necessary number of signatures might be obtained, but even thus it would be very doubtful, and such canvass would consume several weeks' time, and feelings of distrust and dissatisfaction would doubtless be engendered thereby.

I feel that I did everything that was proper and reasonable in presenting the matter and endeavoring to obtain the necessary three-fourths majority of the Indians, and failing to obtain such majority, I felt justified in abandoning the work.

The determination of a number of the more influential Indians to hold out for such price as the lands will sell for to settlers, and the Indians receiving payment therefor from the proceeds of the sale of the lands to the settlers, exerts an influence over the Indians which cannot be overcome by any reasoning along the lines proposed and at the price per acre stipulated in the agreement.

The agreement which I submitted to the Indians, and which contains 737 signatures of concurrence (296 less than the required three-fourths majority), together with the minutes of the councils held with the Indians in relation to the matter, are herewith transmitted.

I am, Sir, very respectfully,
Your obedient servant,

James McLaughlin,
United States Indian Inspector

[#15E]

Proclamation of May 13, 1904,
33 Stat. 2354

A PROCLAMATION.

Whereas by an agreement between the Sioux tribe of Indians on the Rosebud Reservation, in the State of South

Dakota, on the one part, and James McLaughlin, a United States Indian Inspector, on the other part, amended and ratified by act of Congress approved April 23, 1904 (Public No. 148), the said Indian tribe ceded, conveyed, transferred, relinquished, and surrendered, forever and absolutely, without any reservation whatsoever, expressed or implied, unto the United States of America, all their claim, title, and interest of every kind and character in and to the unallotted lands embraced in the following described tract of country now in the State of South Dakota, to wit:

Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one north; thence east along said township line to the point of beginning.

The unallotted and unreserved land to be disposed of hereunder approximates three hundred and eighty-two thousand (382,000) acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

And whereas, in pursuance of said act of Congress ratifying the agreement named, the lands necessary for sub-issue station, Indian day school, Catholic and Congregational missions are by this proclamation, as hereinafter appears, reserved for such purposes, respectively:

And whereas, in the act of Congress ratifying the said agreement, it is provided:

Sec. 2. That the lands ceded to the United States under said agreement, excepting such tracts as may be

reserved by the President, not exceeding three hundred and ninety-eight and sixty-seven one-hundredths acres in all, for sub-issue station, Indian day school, one Catholic mission, and two Congregational missions, shall be disposed of under the general provisions of the homestead and townsite laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish war or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged; *And provided further*, That the price of said lands entered as homesteads under the provisions of this Act shall be as follows: Upon all lands entered or filed upon within three months after the same shall be opened for settlement and entry, four dollars per acre, to be paid as follows: One dollar per acre when entry is made; seventy-five cents per acre within two years after entry; seventy-five cents per acre within three years after entry; seventy-five cents per acre within four years after entry, and seventy-five cents per acre within six months after the expiration of five years after entry. And upon all land entered or filed upon after the expiration of three months and within six months after the same shall be opened for settlement and entry, three dollars per acre, to be paid as follows: One dollar per acre when entry is made; fifty

cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and fifty cents per acre within six months after the expiration of five years after entry. After the expiration of six months after the same shall be opened for settlement and entry the price shall be two dollars and fifty cents per acre, to be paid as follows: Seventy-five cents when entry is made; fifty cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and twenty-five cents per acre within six months after the expiration of five years after entry: *Provided*, That in case any entryman fails to make such payment or any of them within the time slated all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and held for cancellation and the same shall be canceled: *And provided*, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry, as now provided by law, where the price of the land is one dollar and twenty-five cents per acre: *And provided further*, That all lands herein ceded and opened to settlement under this Act, remaining undisposed of at the expiration of four years from the taking effect of this act, shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one purchaser.

* * * * *

Sec. 4. That sections sixteen and thirty-six of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, of the land in said county of Gregory are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

And whereas, all of the conditions required by law to be performed prior to the opening of said tracts of land to settlement and entry have been, as I hereby declare, duly performed:

NOW, THEREFORE, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power vested in me by law, do hereby declare and make known that all of the lands so as aforesaid ceded by the Sioux tribe of Indians of the Rosebud Reservation, saving and excepting sections sixteen and thirty-six in each township, and all lands located or selected by the State of South Dakota as indemnity school or educational lands, and saving and excepting the W¹/₂ of the NE¹/₄ and the E¹/₂ of the NW¹/₄ of Sec. 25, T. 96 N., R. 72 W., of the 5th P.M., which is hereby reserved for use as a sub-issue station; and the NE¹/₄ of the SW¹/₄ of Sec. 23, T. 96 N., R. 72 W., of the 5th P.M. which is hereby reserved for use as an Indian day school; and saving and excepting the N¹/₂ of the NE¹/₄ of

Sec. 25, T. 95 N., R. 71 W., of the 5th P.M., and the NW¹/₄ of the NW¹/₄ of Sec. 20, T. 95 N., R. 70 W., of the 5th P.M., both of which tracts are hereby reserved for use of the American Missionary Society for mission purposes; and the N¹/₂ of the NW¹/₄ of Sec. 7, T. 96 N., R. 71 W., of the 5th P.M., which is hereby reserved for the Roman Catholic Church for use for mission purposes, will, on the eighth day of August, 1904, at 9 o'clock a.m., in the manner herein prescribed and not otherwise, be opened to entry and settlement and to disposition under the general provisions of the homestead and townsite laws of the United States.

Commencing at 9 o'clock a.m., Tuesday, July 5, 1904, and ending at 6 o'clock p.m., Saturday, July 23, 1904, a registration will be had at Chamberlain, Yankton, Bonesteel, and Fairfax, State of South Dakota, for the purpose of ascertaining what persons desire to enter, settle upon, and acquire title to any of said lands under the homestead law, and of ascertaining their qualifications so to do. To obtain registration each applicant will be required to show himself duly qualified, by written application to be made only on a blank form provided by the Commissioner of the General Land Office, to make homestead entry of these lands under existing laws and to give the registering officer such appropriate matters of description and identity as will protect the applicant and the government against any attempted impersonation. Registration can not be effected through the use of the mails or the employment of an agent, excepting that honorably discharged soldiers and sailors entitled to the benefits of section twenty-three hundred and four of the Revised Statutes of the United States, as amended by the act of Congress approved March 1, 1901, (31 Stat., 847) may present their applications for registration and due proofs of their qualifications through an agent of their own selection, having a duly executed power of attorney, but no person will be permitted to act as agent for more than one such soldier or sailor. No person will be permitted to register more than

once or in any other than his true name. Each applicant who shows himself duly qualified will be registered and given a non-transferable certificate to that effect, which will entitle him to go upon and examine the lands to be opened hereunder; but the only purpose for which he can go upon and examine said lands is that of enabling him later on, as herein provided, to understandingly select the lands for which he will make entry. No one will be permitted to make settlement upon any of said lands in advance of the opening herein provided for, and during the first sixty days following said opening no one but registered applicants will be permitted to make homestead settlement upon any of said lands, and then only in pursuance of a homestead entry duly allowed by the local land officers, or of a soldier's declaratory statement duly accepted by such officers.

The order in which, during the first sixty days following the opening, the registered applicants will be permitted to make homestead entry of the lands opened hereunder, will be determined by a drawing for the district publicly held at Chamberlain, South Dakota, commencing at 9 o'clock a.m., Thursday, July 28, 1904, and continuing for such period as may be necessary to complete the same. The drawing will be had under the supervision and immediate observance of a committee of three persons whose integrity is such as to make their control of the drawing a guaranty of its fairness. The members of this committee will be appointed by the Secretary of the Interior, who will prescribe suitable compensation for their services. Preparatory to this drawing the registration officers will, at the time of registering each applicant who shows himself duly qualified, make out a card, which must be signed by the applicant, and giving such a description of the applicant as will enable the local land officers to thereafter identify him. This card will be subsequently sealed in a separate envelope which will bear no other distinguishing label or mark than such as may be necessary to show that it is to go into the drawing. These

envelopes will be carefully preserved and remained sealed until opened in the course of the drawing herein provided. When the registration is completed, all of these sealed envelopes will be brought together at the place of drawing and turned over to the committee in charge of the drawing, who, in such manner as in their judgment will be attended with entire fairness and equality of opportunity, shall proceed to draw out and open the separate envelopes and to give to each enclosed card a number in the order in which the envelope containing the same is drawn. The result of the drawing will be certified by the committee to the officers of the district and will determine the order in which the applicants may make homestead entry of said lands and settlement thereon.

Notice of the drawings, stating the name of each applicant and number assigned to him by the drawing, will be posted each day at the place of drawing, and each applicant will be notified of his number and of the day upon which he must make his entry, by a postal card mailed to him at the address given by him at the time of registration. The result of each day's drawing will also be given to the press to be published as a matter of news. Applications for homestead entry of said lands during the first sixty days following the opening can be made only by registered applicants and in the order established by the drawing. The land officers for the district will receive applications for entries at Bonesteel, South Dakota, in their district, beginning August 8, 1904, and until and including September 10, 1904, and thereafter at Chamberlain. Commencing Monday, August 8, 1904, at 9 o'clock a.m., the applications of those drawing numbers 1 to 100, inclusive, must be presented and will be considered in their numerical order during the first day, and the applications of those drawing numbers 101 to 200, inclusive, must be presented and will be considered in their numerical order during the second day, and so on at that rate until all of said lands subject to entry under the homestead law, and desired thereunder have been entered. If any applicant fails

to appear and present his application for entry when the number assigned to him by the drawing is reached, his right to enter will be passed until after the other applications assigned for that day have been disposed of; when he will be given another opportunity to make entry, failing in which he will be deemed to have abandoned his right to make entry under such drawing. To obtain the allowance of a homestead entry, each applicant must personally present the certificate of registration theretofore issued to him, together with a regular homestead application and the necessary accompanying proofs, and make the first payment of one dollar per acre for the land embraced in his application, together with the regular land office fees, but an honorably discharged soldier or sailor may file his declaratory statement through his agent, who can represent but one soldier or sailor as in the matter of registration. The production of the certificate of registration will be dispensed with only upon satisfactory proof of its loss or destruction. If at the time of considering his regular application for entry it appear that an applicant is disqualified from making homestead entry of these lands his application will be rejected, notwithstanding his prior registration. If any applicant shall register more than once hereunder, or in any other than his true name, or shall transfer his registration certificate, he will thereby lose all the benefits of the registration and drawing herein provided for, and will be precluded from entering or settling upon any of said lands during the first sixty days following said opening.

Any person or persons desiring to found, or to suggest establishing, a townsite upon any of said ceded lands, at any point, may, at any time before the opening herein provided for, file in the land office a written application to that effect, describing by legal subdivisions the lands intended to be affected, and stating fully and under oath the necessity or propriety of founding or establishing a town at that place. The local officers will forthwith transmit said petition to the Commissioner of the General Land Office with their

recommendation in the premises. Such Commissioner, if he believes the public interests will be subserved thereby, will, if the Secretary of the Interior approve thereof, issue an order withdrawing the lands described in such petition, or any portion thereof, from homestead entry and settlement and directing that the same be held for the time being for townsite settlement, entry, and disposition only. In such event, the lands so withheld from homestead entry and settlement will, at the time of said opening and not before, become subject to settlement, entry, and disposition under the general townsite laws of the United States. None of said ceded lands will be subject to settlement, entry, or disposition under such general townsite laws except in the manner herein prescribed until after the expiration of sixty days from the time of said opening.

All persons are especially admonished that under the said act of Congress approved April 23, 1904, it is provided that no person shall be permitted to settle upon, occupy, or enter any of said ceded lands except in the manner prescribed in this proclamation until after the expiration of sixty days from the time when the same are opened to settlement and entry. After the expiration of the said period of sixty days, but not before, and until the expiration of three months after the same shall have been opened for settlement and entry, as hereinbefore prescribed, any of said lands remaining undisposed of may be settled upon, occupied, and entered under the general provisions of the homestead and townsite laws of the United States in like manner as if the manner of effecting such settlement, occupancy, and entry had not been prescribed herein in obedience to law, subject, however, to the payment of four dollars per acre for the land entered, in the manner and at the time required by the said act of Congress above mentioned. After the expiration of three months, and not before, and until the expiration of six months after the same shall have been opened for settlement and entry, as aforesaid, any of said lands remaining undisposed of may also be settled upon, occupied, and

entered under the general provisions of the same laws and in the same manner, subject, however, to the payment of three dollars per acre for the land entered in the manner and at the times required by the same act of Congress. After the expiration of six months, and not before, after the same shall have been opened for settlement and entry, as aforesaid, any of said lands remaining undisposed of may also be settled upon, occupied, and entered under the general provisions of the same laws and in the same manner, subject, however, to the payment of two dollars and fifty cents per acre for the land entered, in the manner and at the times required by the same act of Congress. And after the expiration of four years from the taking effect of this act, and not before, any of said lands remaining undisposed of shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one purchaser.

The Secretary of the Interior shall prescribe all needful rules and regulations necessary to carry into full effect the opening herein provided for.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 13th day of May, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty-eighth.

Theodore Roosevelt

By the President:

Francis B. Loomis,

Acting Secretary of State.

[#19A]

HOMESTEAD SETTLERS UPON CERTAIN LANDS

January 5, 1905. Ordered to be printed.

Mr. Hansbrough, from the Committee on Public Lands, submitted the following

REPORT

[To accompany S.5799.]

The committee on Public Lands, to whom was referred the bill (S. 5799) to provide for the extension of time within which homestead settlers may establish their residence upon certain lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, S. Dak., having had the same under consideration, beg leave to report the bill back with the recommendation that it be amended, and that as amended it do pass. . . .

The suggested amendments are as follows:

In line 9, page 1, after the word "Approved," insert:

April 23, 1904, and the homestead settlers on the lands which were heretofore a part of the Devils Lake Indian Reservation, in the State of North Dakota, opened under an act entitled "An act to modify and amend an agreement with the Indians of the Devils Lake Reservation, in North Dakota, to accept and ratify the same as amended, and making appropriation and provision to carry the same in effect," approved April 27, 1904.

In Line 5, page 2, add the letter "s" to the word "Act," so as to make it read "acts."

The portion of the Rosebud Indian Reservation which was subject to the legislation provided by the act of April 23, 1904, was thrown open for settlement by the proclamation of the President of the United States under date of May 13, 1904. Under the terms of this proclamation each qualified applicant was registered between July 5 and July 23, and entry was made by the successful applicants beginning on August 8 and continuing until September 10. The lands in the Devils Lake Indian Reservation were thrown open for settlement by proclamation of the President of the United

States under date of June 2, 1904. Under the terms of this proclamation each qualified applicant was registered between August 8, and August 20, and entry was made by the successful applicants beginning on the 6th day of September. Under law, and the regulations of the General Land Office thereunder, settlement must be made within six months from the date of filing. This would compel the homesteaders who seek to secure lands within the confines of that part of the Rosebud Indian Reservation thrown open to entry to make their settlement during the month of February, and the settlers on the land within the Devils Lake Reservation to make their settlement in the month of March.

The climatic conditions prevailing during the months of February and March in North and South Dakota are such as to render it difficult, if not dangerous, for settlers to go upon the land and attempt to construct a residence thereon. In view, therefore, of these conditions and of the fact that the settlers who are affected by the provisions of the proposed legislation did not have the choice of the time at which they made their filings, but had to do so at the time set in the proclamation of the President, it seems just that the time within which they have to make their settlements upon the land should be extended until the 1st of May, at which time climatic conditions are such as to render it feasible for them to construct necessary buildings. A further fact which influences the committee in making a favorable report is that these settlers are under conditions different to those affecting the ordinary homestead settler. Entrymen on the reservations in question have to pay \$4 an acre in the case of the Rosebud Reservation and \$4.50 an acre in the case of the Devils Lake Reservation, \$1 and \$1.50 per acre, respectively, being paid in advance at the time of entry.

Those who took advantage of the President's proclamation were, as far as can be ascertained, people in poor circumstances, and they desired to avail themselves of all the time they could to make the money necessary to complete

payments on the land. For this reason settlement was not made last fall, that being the time when the harvest season being in progress good wages could be earned. If they had made settlement upon the land in the fall, moreover, they would have been under the necessity of the expenditure of further money to support them during the winter time through which they would have no opportunity of securing work in the vicinity of their new home, and of, therefore, making their expenses.

Amend the title so as to read:

A bill to provide for the extension of time within which homestead settlers may establish their residence upon certain lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, South Dakota, and upon certain lands which were heretofore a part of the Devils Lake Indian Reservation, in the state of North Dakota.

[#19B]

HOMESTEAD SETTLERS UPON CERTAIN LANDS

February 3, 1905.—Referred to the House Calendar and ordered to be printed.

Mr. Martin, from the Committee on the Public Lands, submitted the following

REPORT

[To accompany S. 5799.]

The Committee on the Public Lands, to whom was referred the bill (S. 5799) to provide for the extension of time within which homestead settlers may establish their residence upon certain lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, S. Dak., having had the same under consideration, beg leave to report the bill back with the recommendation that it do pass.

The portion of the Rosebud Indian Reservation which was subject to the legislation provided by the act of April 23, 1904, was thrown open for settlement by the proclamation of the President of the United States under date of May 13, 1904. Under the terms of this proclamation each qualified applicant was registered between July 5 and July 23, and entry was made by the successful applicants beginning on August 8 and continuing until September 10. The lands in the Devils Lake Indian Reservation were thrown open for settlement by proclamation of the President of the United States under date of June 2, 1904. Under the terms of this proclamation each qualified applicant was registered between August 8 and August 20, and entry was made by the successful applicants beginning on the 6th day of September. Under law, and the regulations of the General Land Office thereunder, settlement must be made within six months from the date of filing. This would compel the homesteaders who seek to secure lands within the confines of that part of the Rosebud Indian Reservation thrown open to entry to make their settlement during the month of February, and the settlers on the land within the Devils Lake Reservation to make their settlement in the month of March.

The climatic conditions prevailing during the months of February and March in North and South Dakota are such as to render it difficult, if not dangerous, for settlers to go upon the land and attempt to construct a residence thereon. In view, therefore, of these conditions and of the fact that the settlers who are affected by the provisions of the proposed legislation did not have the choice of the time at which they made their filings, but had to do so at the time set in the proclamation of the President, it seems just that the time within which they have to make their settlements upon the land should be extended until the 1st day of May, at which time climatic conditions are such as to render it feasible for them to construct necessary buildings. A further fact which

influences the committee in making a favorable report is that these settlers are under conditions different to those affecting the ordinary homestead settler. Entrymen on the reservations in question have to pay \$4 an acre in the case of the Rosebud Reservation and \$4.50 an acre in the case of the Devils Lake Reservation, \$1 and \$1.50 per acre respectively, being paid in advance at the time of entry.

Those who took advantage of the President's proclamation were, as far as can be ascertained, people in poor circumstances, and they desired to avail themselves of all the time they could to make the money necessary to complete payments on the land. For this reason settlement was not made last fall, that being the time when the harvest season being in progress good wages could be earned. If they had made settlement upon the land in the fall, moreover, they would have been under the necessity of the expenditure of further money to support them during the winter time through which they would have no opportunity of securing work in the vicinity of their new home, and of, therefore, making their expenses.

[#20A]

40 Cong. Rec. 3460-65

INDIAN APPROPRIATION BILL

Mr. SHERMAN. I move that the house resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the Indian appropriation bill; and pending that, Mr. Speaker, I ask unanimous consent that general debate be concluded today, and that the time be controlled by the gentleman from Texas [Mr. Stephens] and myself in equal parts.

The SPEAKER. The gentleman from New York asks unanimous consent that general debate upon the Indian appropriation bill be closed to-day and that the time be controlled half and half by the gentleman from New York [Mr.

Sherman] and the gentleman from Texas [Mr. Stephens]. Is there objection?

Mr. STEPHENS of Texas. I have no objection to that arrangement, Mr. Speaker.

There was no objection.

The motion of Mr. SHERMAN was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 15331 — the Indian appropriation bill — with Mr. CURRIER in the chair.

Mr. SHERMAN. Mr. Chairman, I yield one hour to the gentleman from South Dakota [Mr. Burke].

Mr. BURKE of South Dakota. Mr. Chairman, as a member of the committee that reported this bill I desire to submit a few observations on the bill and upon the general subject of Indian legislation. In South Dakota we have a population of something more than 20,000 Indians. I have been a resident of that State about twenty-four years. I have resided in the section of the State adjacent to the Sioux Indian reservations, and therefore in discussing the subject of Indian legislation I am going to speak from the standpoint of one who knows something about the Indians from actual contact and observation.

Mr. Chairman, whenever legislation is suggested in this House for the benefit and advancement of the Indians, or to open for settlement Indian reservations that are not used by the Indians, there are certain people throughout the East that show signs of hysteria and express alarm and fear that the "poor Indian," as they say, is again about to be robbed or outraged. I propose to show, Mr. Chairman, that instead of the Indian being mistreated, that he has been most generously treated, treated better in many respects than our white citizens.

The bill before the committee, as suggested by the chairman, is new in form. The committee considered that the old form, which had been in use many years, was not such a

form as presented the different subjects that the bill covers in the most intelligent manner, and therefore they have adopted and presented here a new form of a bill which I am certain, as stated by the chairman yesterday, will meet with the approval of the Members of the House when they become familiar with the changes and the new form.

The bill contains appropriations for absolute gratuities of \$585,000. About that amount is appropriated every year as a gratuity. The bill contains an item for the support of schools of \$3,558,405, and, as the chairman of the committee stated yesterday, practically that amount is a gratuity. In other words, we expend that amount of money annually for the education of the Indians that is paid out of the Treasury as a gratuity.

I want to call the attention of the House to the Indian allotment law enacted in 1887. That act, recognizing that the Indians had certain rights in the land which they occupy as reservations, provided for allotting to each individual Indian a certain quantity of land, and to each head of a family, to each child over 18 years old, and also to each child, regardless of its age, under 18 years. That provision gives to an Indian with a family of four or five children from a section to a section and a half of land.

In the Sioux Reservation in South Dakota, with which I am familiar, the allotment features of the law opening that portion which was ceded in 1889 increased the area of the allotment by doubling the amount as provided in the original allotment act, so that allotments are made in quantities as follows:

To each head of a family, 320 acres; to each single person over 18 years of age, one-fourth of a section; to each orphan child under 18 years of age, one-fourth of a section; and to each other person under 18 years now living, or who may be borne prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-eighth of a sec-

tion: *Provided*, That where the lands on any reservation are mainly valuable for grazing purposes an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

So that an Indian with a family may take 640 acres of grazing land or 320 acres of agricultural land; to each child over 18 years of age, 320 acres of grazing land, and to each child under 18 years of age, 160 acres of grazing land.

Now, in the case of an Indian with five children there is awarded to him and his family something like 1,400 acres if it is grazing land, or one-half that amount of agricultural land. The land is held in trust for a period of twenty-five years. It is not subject to taxation, and it becomes his absolute property at the end of twenty-five years, and he has the benefit and use of it in the meantime without paying 1 cent of taxation either for schools, for maintaining the township and county or State government.

This allotment law was, as I stated, enacted about twenty years ago, and it contemplates that after the allotment to the Indians on the reservations has been made, then the surplus land or unused land, that the Indians do not require, shall be disposed of and sold under the provisions of the homestead law. And it provides further that the proceeds of the sale of those unused lands shall be paid into the Treasury for the support and maintenance and education and civilization of the tribe.

Mr. Chairman, it has become necessary, in order to secure legislation disposing of these surplus lands, that we shall provide that the money, or a large portion of it, received from the sale of the lands shall be paid to the Indians per capita in cash. In the meantime, we are appropriating from three to four million dollars annually from the Treasury for the education of these same Indians that we are paying money to for surplus and unused lands that we are selling, after they have taken their allotments.

Mr. STEPHENS of Texas. Will the gentleman allow a question?

Mr. BURKE of South Dakota. Yes.

Mr. STEPHENS of Texas. I understand the gentleman to state that about twenty years ago Congress passed a bill permitting the Secretary of the Interior to allot lands to the Indians separately, so that the rest of the reservation might be thrown open; that is the law the gentleman refers to?

Mr. BURKE of South Dakota. Yes.

Mr. STEPHENS of Texas. Does the gentleman know of a single instance where the present Secretary of the Interior has complied with that law and under it allotted lands to the Indians out of their reservations?

Mr. BURKE of South Dakota. Mr. Chairman, I would answer that by saying that this law authorizes the Secretary of the Interior to negotiate an agreement with the Indians for a sale of these unused lands, and there have been many such agreements sent to this House that were negotiated under the provision I have referred to in the original allotment law.

Mr. STEPHENS of Texas. Mr. Chairman, can the gentleman point out one negotiated by the present Secretary, where he has allotted lands to the individual Indians?

Mr. BURKE of South Dakota. I most certainly can. In South Dakota he has sent to this House one referring to the sale of a portion of the Rosebud Reservation, that portion located in Gregory County, and another relating to the Lower Brule Reservation.

Mr. STEPHENS of Texas. That was not done in response to the act of Congress passed twenty years ago, was it?

Mr. BURKE of South Dakota. It was, Mr. Chairman. It was under authority given to the Secretary under the law to which I have referred.

Mr. STEPHENS of Texas. Can the gentleman state why there is a difference made between his State and New Mexico and Arizona?

Mr. BURKE of South Dakota. I am not familiar with the conditions in the two Territories named by the gentleman.

Mr. STEPHENS of Texas. Or Oklahoma?

Mr. BURKE of South Dakota. Or Oklahoma. My recollection is that we did have a treaty or an agreement pertaining to some portion of the Kiowa and Comanche reservations, with which the gentleman is familiar, that was negotiated under the present Secretary of the Interior.

Mr. STEPHENS of Texas. That was in 1892, before Mr. Hitchcock's administration.

Mr. BURKE of South Dakota. That may be true.

Mr. FITZGERALD. Mr. Chairman, while many agreements have been negotiated, none have been ratified, practically none, in the form in which they were negotiated. And that is what confuses the gentleman from Texas [Mr. STEPHENS].

Mr. BURKE of South Dakota. Mr. Chairman, it is true that since the decision by the Supreme Court in what is known as the "Lone Wolf case" treaties or agreements have not been ratified, but legislation has been enacted along the line of agreements substantially complying therewith. I desire to call attention to a provision of the allotment law to which I have referred substantiating what I have said as to what shall be done with moneys that may be received from the sale of the unused portions of Indian reservations. In section 5 of that law I read this paragraph:

And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians to whom such reservations belong, and the same, with interest thereon at 3 per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof.

Mr. Chairman, in the bill dividing the great Sioux Reservation in South Dakota into separate reservations that identical language was incorporated, showing that it was the

policy and the intention of Congress when the original allotment law was passed, after giving to an individual Indian a certain tract of land in the form of an allotment, to have the balance of the lands which constituted the reservation sold and disposed of and the proceeds put in the Treasury for the support, education, and civilization of those Indians. I merely refer to this, Mr. Chairman, for the purpose of showing that, instead of mistreating the Indians, we are dealing with them in a manner that is extremely generous. I am not criticising that policy, because there is no question that under the system of education the Indian is making very rapid progress. I believe that in the past ten years, under the policy that has prevailed dealing with the Indians of this country, they have made greater progress than they made in the fifty previous years.

As the chairman of the committee stated yesterday, instead of appropriating money and buying rations and issuing them to Indians regardless of whether they are able to work or not, to-day we are legislating that moneys appropriated for the support of Indians may be commuted instead of giving them a ration by requiring them to work and paying them for their labor. For many years it was thought that the Indian ought not to work; that he was different from a white man, and there was a certain sentiment that controlled legislation relating to him, and he was supposed to be permitted to live in absolute idleness and roam over the country hunting and fishing without having to think once or care where his next meal was coming from, because he knew that he could go to the agency and there he would have issued to him meat and other provisions, as well as clothing. Under the policy that prevails now an Indian who is able-bodied, who is capable of laboring, is given to understand that if he wants to eat he has got to work the same as a white man, and throughout my State, where, as I say, we have a great many Indians, that system has worked with good results. We have Indians employed not only upon the reser-

vations in the construction of roads, in the construction of irrigation works, in hauling freight for the agencies, but in many instances Indians are employed off the reservation the same as any other citizen of the State, and some of them in the western sections of the State are working on the railroad as section hands.

The old Indian — the Indian who has had no opportunity whatever to progress, who is aged and infirm — the Government still cares for, as it formerly did all Indians, by issuing to him rations and providing him with food and clothing. Mr. Chairman, many Members of this House will recollect in the Fifty-seventh Congress that there was passed a bill known as the "Rosebud bill." That bill provided for the disposition and sale of that portion of the Rosebud Reservation in South Dakota located in Gregory County. Before the measure became a law there was a very strenuous opposition, not in this House, but from sources entirely independent of this House and originating at Philadelphia. The Indian Rights' Association, assuming to know the facts and believing that the proposed legislation of the bill, claiming that it was going to do a wrong to the Indians, and that it was dishonest for that reason.

Notwithstanding that opposition and after some concessions were made as to the price of the land, the bill became a law. The bill provided that the land should be disposed of to settlers under the provisions of the homestead law, under rules and regulations to be prescribed by the Secretary of the Interior, and under the authorization the Department applied what is known as the "lottery system." The lottery system has been in use now in the opening of two or three reservations, and the only opposition to the system, the only denunciation of the system, has come from the extreme East and in remote parts of the country from where the law has been applied. The Rosebud measure has been criticised since it was enacted by certain magazine and other writers, and particularly has the feature relative to the

lottery system been denounced. Now, Mr. Chairman, the Rosebud bill, as I stated, opened to settlement about 400,000 acres of land. In the tract affected there were something over 500,000 acres. Before the law was applicable the Indians had the right to locate and select allotments in the portion that was affected by the bill. They proceeded to locate and select their allotments and took out of the tract 100,000 acres of land, and I want to say that Indians, in many respects, are like white men and they know good land from bad land, and when they took that hundred acres out of that tract for their allotments they took the very best parts of it, and the parts of it especially that were along the streams and the creeks. That law provides that the balance of the land shall be sold; first, for all lands taken in the first three months the price to be \$4 an acre; after the three months and for the next three months the price to be \$3 per acre, and after that the price to be \$2.50 an acre. Mr. Chairman, notwithstanding the fact that the Indians had taken their allotments as the allotment law provided, that they are to possess this land for twenty-five years without being obliged to pay any taxes whatever, notwithstanding that the value of these lands is to be greatly enhanced by reason of the adjoining lands being settled upon and cultivated by the white settler, notwithstanding the provisions to which I have referred in the general allotment law and which is also in the law which created the Rosebud Reservation, instead of providing that the money should be placed in the Treasury for the education and the civilization and advancement of these Indians the law provides that it shall be paid out to them, one-half of it per capita in cash. Mr. Chairman, I want to state now that in the future, from the standpoint of the best interests of the Indians, to say nothing of following the law which we have on the statute books, I shall protest against moneys being paid to Indians in cash that may be realized from the sale of lands which they do not use and do not occupy.

Mr. FITZGERALD. Mr. Chairman, will the gentleman yield for a question?

Mr. BURKE of South Dakota. Certainly.

Mr. FITZGERALD. Does the gentleman object to the policy of paying part of the proceeds of those sales in cash to the Indians?

Mr. BURKE of South Dakota. I most certainly do, Mr. Chairman, and I shall protest against any measure that may come up in this House again containing such a provision.

Mr. FITZGERALD. Under the Rosebud bill provision was made that a very large percentage of the funds derived should be paid in cash to the Indians?

Mr. BURKE of South Dakota. Yes, sir.

Mr. FITZGERALD. Did the gentleman protest against that feature in that bill?

Mr. BURKE of South Dakota. Mr. Chairman, it was necessary to have the bill apparently upon its face extremely liberal toward the Indians in order to overcome the opposition represented by my distinguished friend from New York.

Mr. FITZGERALD. The opposition represented by myself, the gentleman said, never urged that large percentage payments be paid to the Indians. If the gentleman recollects, he himself desired that large percentage payments be made in order to allay the fears and stop the protests of the Indians who owned these lands that were to be disposed of.

Mr. BURKE of South Dakota. Let me say to the gentleman that it is another argument against the system of negotiating treaties or agreements with the Indians. That provision was put in the Rosebud bill because it was in the agreement with the Indians. It was put in the agreement with the Indians because they could not make an agreement unless it was in.

Mr. FITZGERALD. But the gentleman knows that he is one of those who have been urging most strenuously that Congress ignore completely the terms of these agreements.

Mr. BURKE of South Dakota. Yes, and I shall continue to urge that.

Mr. FITZGERALD. And I simply wish to call attention to the fact that in the bill opening a reservation in his own district he desired to have as much put into the bill as was possible in order to prevent the outcry on the part of the Indians.

Mr. BURKE of South Dakota. Mr. Chairman, my position on the question of disposing of Indian lands is and will hereafter be governed entirely by what I believe to be for the best interests of the Indians.

Mr. FITZGERALD. If it would not interrupt the gentleman's statement, I wish he would give the House this information, namely, the amount of acres disposed of under the Rosebud bill, and the maximum price, and each of the other prices.

Mr. BURKE of South Dakota. A little further on I will give the gentleman exactly that information. I was about to say, Mr. Chairman, that I am hereafter going to favor legislation that I believe is for the best interest of the Indians from every standpoint. The Indians of this country, in one sense, are mere children, and it is absurd for Congress, that has jurisdiction over them, when it considers some measure is advisable to promote their interests, to have to go to them and ask them to consent that they be dealt with honestly and, as Congress believes, wisely. And it is because of that system that this condition has arisen by which moneys are being squandered that otherwise should be husbanded and expended for the advancement and education of the Indian as the original allotment law contemplated.

Mr. STEPHENS of Texas. Would the gentleman be willing to support a measure that would provide that all the lands in the Indian reservations containing valuable minerals might be thrown open under the United States mining laws, and the proceeds thereof applied to the In-

dians, as another Indian fund — a general bill of that kind covering all mineral reservations?

Mr. BURKE of South Dakota. Without having opportunity, Mr. Chairman, to give the question any consideration, I am inclined to say no. Perhaps I do not understand the question.

Mr. STEPHENS of Texas. Then can the gentleman give any reason why a great many million acres of land containing valuable mineral deposits should be locked up in Indian reservations and indefinitely withheld from the American miner and prospector?

Mr. BURKE of South Dakota. If that condition prevails, Mr. Chairman, it is not within the section of the country with which I am familiar.

Mr. STEPHENS of Texas. The gentleman is very fortunate in living in the section of the country that he does. I hope the gentleman will remove his place of residence to the great Territories of the Southwest, where these conditions do prevail, namely, New Mexico and Arizona.

Mr. BURKE of South Dakota. I will state to the gentleman that I have the good fortune to live in a section of country that has the richest hundred square miles in the world, known as the Black Hills.

Mr. STEPHENS of Texas. I am glad to know that the gentleman is so fortunately situated, and I hope he will turn his attention outside of his own balliwick and assist those Territories that have no voting representation on this floor, and that are not entitled to votes here, to secure their rights. They should have separate statehood, and their representatives on this floor and in the Senate, so that these Indian tracts of land may be thrown open and that country may be developed.

Mr. BURKE of South Dakota. It has been asked, Mr. Chairman, what disposition was to be made of the proceeds of the sale of this Rosebud Reservation other than the one-half which is to be paid to them per capita in cash. I wish to

say that the law provides that the balance of the money shall be expended for stock cattle, and that cattle shall be issued to the Indians. So that while they do not get all of the money in cash, only getting half of it, the other half is given to them in cattle, or the equivalent of cash. Now, notwithstanding, Mr. Chairman, the provision of the allotment law to which I have referred, that the moneys received from the sale of lands similar to the Rosebud lands shall be placed in the Treasury for the support and education of the Indians, we are paying out the entire amount to the Indians and at the same time we are making appropriations from the Treasury to educate these Indians that are benefited by the sale of the Rosebud lands.

The original agreement with the Rosebud Indians provided that they should be paid for the lands the sum of \$2.50 an acre, which would have made an aggregate sum of \$1,040,000. When we proposed the measure which finally became a law, which does not obligate the Government to pay for any of it except sections 16 and 36, which are ceded to the State for school purposes, it was claimed that unless there was a price put upon the land, some claiming as high as \$10 an acre, that it would be disposed of for a low price and the Indians would not receive anything like as much as they would have received if the agreement had been carried out, viz, a million and forty thousand dollars.

Mr. Chairman, that bill became operative, so far as the opening was concerned, on the 8th day of August, 1904, about a year and a half ago. I have here from the General Land Office a letter signed by the Commissioner, giving a statement of the amount of lands that have been disposed of at the different prices and the amount of money that has been received and placed in the Treasury to the credit of the Indians up to December 31, 1905. This statement shows conclusively that when the matter is finally completed and the land is all disposed of and paid for, instead of the Indians receiving \$1,040,000 they will probably receive from \$200,-

000 to \$400,000 in excess of that amount. For the benefit of the House I would like, Mr. Chairman, to have the letter read which I send to the Clerk's desk; also a letter from the Secretary of the Treasury, showing the amount of money that has been paid into the Treasury by reason of sales of land in the Rosebud Reservation, in Gregory County, to which I have referred.

The Clerk read as follows:

Department of the Interior,
General Land Office,
Washington, D.C., February 7, 1906.

Hon. Charles H. Burke,
House of Representatives.

SIR: I have the honor to acknowledge the receipt of your letter of January 27, 1906, requesting to be furnished with a statement up to and including December 31, 1905, of the lands disposed of in Gregory County, S. Dak., in what was formerly the Rosebud Reservation, opened to entry under the provisions of the act of April 23, 1904 (33 Stat., 254).

In response to your inquiries I have to state—

First. During the period ending on the date above mentioned there were made 1,881 homestead entries of the \$4 class, embracing approximately 300,960 acres.

Second. One hundred and sixty-two homestead entries of the \$3.00 class, embracing 21,898.87 acres.

Third. Three hundred and four homestead entries of the \$2.50 class, embracing 38,045.82 acres.

Fourth. Four hundred and twenty homestead entries, all of the \$4 class, upon which the first payment of \$1 per acre had been made, were relinquished and the land embraced therein reentered. The area covered by these entries was 64,969.47 acres, and the money received therefore, \$64,969.47.

Fifth. Twenty-nine thousand five hundred and forty-three and fifty one-hundredth acres were granted to the

State under the provisions of section 4 of the act above referred to. In accordance with the terms of said act the Indians received \$2.50 per acre for said lands, amounting in the aggregate to \$73,858.75, and this amount has been paid into the Treasury for the credit of the Indians on account of said school lands.

Sixth. Homesteads embracing 29,532.19 acres of the \$4 grade were commuted, and \$118,128.76 was received therefor. One homestead entry of 160 acres, perfected under sections 2292, 2304, and 2305, Revised Statutes, the entryman having four years' military service to his credit and having paid the full price of the lands, is included in the area given.

Seventh. There are approximately 110,080 acres remaining unappropriated, which would make 688 homestead entries of 160 acres each.

Eighth. No contests arose by reason of different parties claiming the same tract during the sixty-day period following the day of opening (August 8, 1904), during which period a preference right of entry was given to parties who had registered, and no such contests could arise for the reason that during this period rights were initiated by entry of filing and not by settlement under the provisions of the President's proclamation.

The order in which entries of this land should be made was determined by registration and drawing, in accordance with a plan which was adopted by President McKinley and first used in opening to entry the Kiowa-Comanche Reservation, in Oklahoma, in 1901. Since that time it has also been used in opening the Rosebud, Devils Lake, and Uintah reservations, embracing in the aggregate three and one-half million acres of land. In these openings there were registered in the aggregate 304,000 people and in none of them were those participating subjected to any great hardship and to but little inconvenience. No complaint of any

character has reached this office, either as to the fairness of the method employed, its execution, or the results obtained.

The figures given in the first, second, third, and fourth items are approximately correct, and it is believed will serve your purpose, although some slight changes might be made therein upon a more careful inspection of the records.

Very respectfully,

W. A. Richards,
Commissioner.

Treasury Department, Office of the Secretary,
Washington, January 30, 1906.

Hon. Charles H. Burke,
House of Representatives.

Sir: In reply to your letter of the 27th instant asking for a statement of the amount paid into the Treasury to December 31, 1905, as proceeds of Rosebud Reservation sold under section 5, act of April 23, 1904, I would state that the sum of \$434,907.87 has been so received and covered.

By the same act Congress appropriated the sum of \$75,000, or so much thereof as might be necessary, to pay for sections 2 and 16, granted to the State of South Dakota. The net amount required to execute this provision of the law is \$73,858.75, making a total credit on account of land disposed of, of \$508,766.62.

There has been disbursed from this appropriation the sum of \$87,280.20, leaving a balance available of \$421,486.42.

Respectfully,

L. M. Shaw, *Secretary.*

Mr. BURKE of South Dakota. Mr. Chairman, it appears by these letters that more than half a million dollars has already been paid into the Treasury, notwithstanding but

very few have yet made final entry and final payment, not having been there long enough to do so and comply with the law. I think it will be seen that there will be nearly, if not quite, another million dollars received from the sales of these lands, making a total of about a million and a half dollars as against the million and forty thousand dollars they would have received under the treaty.

I want to refer further to this letter which has been read from the Commissioner, which states that under this so-called "lottery system" there never has been any complaint from anyone who registered and took advantage of the system in order to get or acquire a claim. One hundred and five thousand people, in round numbers, went to South Dakota and registered in order to have a chance to get a claim in this Rosebud country, and notwithstanding that great number of people, there never has been, so the Commissioner states, one complaint from any person, and not a contest by reason of more than one person claiming the same tract of land.

Mr. MARTIN. Mr. Chairman, I would ask my colleague to state that out of this hundred and five thousand applicants for the privilege of filing upon the lands how many entries, in fact, could have been made and were made?

Mr. BURKE of South Dakota. About twenty-five hundred in round numbers could have been made, but of those that registered not to exceed about twelve or thirteen hundred made entries.

Mr. MARTIN. So that the number of those people who could, in fact, obtain a piece of this land under homestead filing was very small.

Mr. BURKE of South Dakota. Yes; very small. Under the system that prevailed before the lottery system was adopted there could not have helped being serious bloodshed and loss of life, and there would have been litigation that would have

lasted for the next twenty years between parties in contest claiming the same tract of land. But under this lottery system there has not been any complaint, but general satisfaction expressed and no contest whatever. Yet, Mr. Chairman, when you get down in the extreme East there are those who are ready to make a criticism about what is called the Government indulging in running a lottery. It is the most fair, and the only fair manner I can conceive of in disposing of such lands.

Mr. Chairman, I have endeavored to show generally that the Indians of this country are being treated very generously by the Government. I have cited the case of the Rosebuds to show that that is the fact, and that we have dealt with them in what might almost be termed an extravagant manner. I do not think that any person who knows anything about or is familiar with the Indian would say that it was for his best interest to take the money that might possibly belong to him and pay it out to him to spend as he might see fit. There is no parent, who is possessed of means, that would give any considerable amount to his child to squander. On the contrary, he would husband it and spend it for the advancement, education, and development of the child, and if possible when the child has reached his majority and shown traits of character that demonstrate that he is capable of managing property and having charge of money, that then he would pay the money out to him, or give it to him and allow him to spend it as he might see fit.

Why, Mr. Chairman, I have in mind one instance of an Indian on the Pine Ridge Reservation in South Dakota who received several hundred dollars as the result of a claim that he had for a depredation. Having received the money, he spent a considerable part of it — I do not know exactly how much, but several hundred dollars — for a hearse. He had no use whatever for it, but he was attracted by it and thought it would be a nice thing to have, and so he spent his money in purchasing a hearse.

Now, I say, for the good of the Indian, and for his advancement, to say nothing of the law which we have on the subject, these moneys should be placed in the Treasury and reserved and expended only as the best interests of the Indians may seem to require.

Mr. MARTIN. Mr. Chairman, if it will not interrupt the line of thought which my colleague is pursuing, I should like to ask him to make a statement as to whether this plan which the Government has adopted in recent years of encouraging the Indians to work, and in a sense of providing work for them within the reservation, for themselves and their teams, has, in fact encouraged them in habits of industry.

Mr. BURKE of South Dakota. I can answer that question from personal knowledge, and unhesitatingly answer it in the affirmative. While when the system was first proposed the Indians rebelled, to-day they favor it. The Government, as I believe I have already stated, instead of issuing rations and clothing to the Indians, provides work — improving roads in some instances, construction of irrigation ditches, or the hauling of freight — and the Indian receives his pay the same as any other man who labors, and the Indian finds that under this new system he is independent. Under the old system an Indian drew his rations, as a rule, every two weeks. That meant a feast for the first two or three days and starvation until the next ration day, whereas now he has his daily pay, from which he supplies his needs the same as his white brother, and, as I stated in the outset, under the new policy that prevails for the conduct of Indian affairs I do not hesitate to say that I believe the Indian has made more progress in the last ten years than in the previous fifty years, and I believe if this policy is continued, that the solution of the Indian question is, at least, in sight. How long it will take remains to be seen.

I believe that the tribal relations ought to be broken up, that as they become capable of managing their affairs the

individual Indians should be allowed to have a fee simple patent to their lands, and if there are any moneys in the Treasury belonging to the tribe that they should be paid their pro rata share and be let go and in future depend upon their own efforts for their livelihood and their success. Of course I would limit this to such individual Indians as had reached such a stage of advancement as to be capable of managing their own affairs.

Mr. Chairman, the bill under consideration contains a provision authorizing the Commissioner of Indian Affairs to investigate and report to Congress upon the desirability of establishing a sanitarium for the treatment of Indians afflicted with tuberculosis. He is also to report, as far as possible, the extent of the prevalence of tuberculosis among Indians. That subject was referred to by the chairman yesterday, and there was some inquiry concerning it.

I wish to say that this is indeed a very serious proposition. In the beginning of this session I introduced a bill to establish an Indian sanitarium on the Missouri River at or near the city of Pierre, or Fort Pierre, in South Dakota, for the purpose of providing a place where Indians suffering from tuberculosis might be taken and cared for and nursed and, if possible, brought back to health.

Mr. STEPHENS of Texas. I will ask the gentleman if he does not think that the best means of preventing the increase of tuberculosis among the Indians would be to educate them on the reservations of the West, where the climate and conditions are of a sort to which they are accustomed, instead of bringing them to the East, to such places as Carlisle and Hampton, having different climates and different conditions.

Mr. BURKE of South Dakota. Mr. Chairman, I want to say that I am in favor of all the different systems of education which we have for the Indians, the reservation school, the agency school, the nonreservation school, and, if you please, the schools mentioned by the gentleman. While

perhaps as an original proposition I would not be in favor of sending the Indian to a remote part of the country for his education, I do believe that the institutions the gentleman has referred to are doing and have done a great work for the development and civilization and education of the Indians of this country; and while it is true that many Indians who go away to eastern schools return to their homes affected with tuberculosis, and perhaps live but a short time, I doubt very much if statistics will show that the proportion of Indians who become affected with tuberculosis while attending school — and I do not care where the schools are located — is as great as among the Indians upon the reservations and that have never been away to school.

I am going to briefly show the condition of the Indians in South Dakota as to tuberculosis. South Dakota is known and recognized as a State where among the whites tuberculosis is not at all prevalent. It is rarely that a case of tuberculosis develops in South Dakota, while we have many people coming into the State afflicted with the disease who recover and live for many years as though they never had been affected. Consequently it can not be said that if tuberculosis is prevalent among the Indians that it is due to any climatic conditions. The bill which I have referred to was sent to the Interior Department, and a report was made thereon by the Commissioner, which was approved by the Secretary, and I am going to refer very briefly to that report. I will quote from the Commissioner's letter as follows:

The prevalence of tuberculosis among the Indians is a matter of grave concern. While investigations made by this Office reveal an alarming situation, it is probably only in particular localities where the scourge is worse among the Indians than among whites under similar conditions. A campaign of education has begun among our own people, and if it is necessary for them it is at least as important for our Indians. In their own camps and cabins they do not have the sanitary con-

veniences of a modern civilized home, and one consumptive may become, through ignorance, a source of infection to numberless other persons.

To show the extent of the prevalence of this disease among the Sioux Indians I will read from this report of the Commissioner a statement made by the agency physician at the Pine Ridge Agency in South Dakota, showing the extent of the disease among the Pine Ridge Indians:

In a recent report by Dr. Joseph R. Walker, agency physician at Pine Ridge Agency, S. Dak., a number of statistical tables were given, from which it appears that in 1905 the full-blood Indian population of the reservation was 4,875, among whom there were 561 cases of consumption during the year, of which 172 were new cases, 104 recoveries, and 109 deaths. The mixed-blood population was 1,822. Among these there were 54 cases of tuberculosis, of which 22 were new, 13 recoveries, and 6 deaths.

The statistics for ten years, from 1896 to 1906, give 903 deaths from tuberculosis among the Indians and 70 deaths among the mixed bloods.

The long service of Doctor Walker at Pine Ridge and his interest in this subject have enabled him to prepare tables unavailable at other reservations, but I assume that the ratio shown at Pine Ridge approximately would hold at the other Sioux reservations of North and South Dakota.

Out of a population of less than 5,000 nearly 1,000 died of tuberculosis within a period of ten years.

The CHAIRMAN. The time of the gentleman from South Dakota has expired.

Mr. SHERMAN. Mr. Chairman, I yield the gentleman fifteen minutes more.

Mr. BURKE of South Dakota. A prominent physician residing in my home city, Dr. D. W. Robinson, president of the board of health of the State, recently contributed an ar-

ticle on the subject of tuberculosis among the Sioux to the Review of Reviews, and it is published in the March number of that magazine. Doctor Robinson is familiar with the conditions of the Sioux Indians, having resided for many years at Pierre, where I reside, adjacent to the Great Sioux Reservation. He has been for many years the physician at the Pierre Indian school, and he has made a study of this subject. In this article he states that up to about 1878 there was no tuberculosis to any extent among the Sioux Indians; that since their mode of life has been changed, and instead of moving from place to place and living in their tepees, they have been confined in small log huts, as was stated yesterday, without ventilation, without any regard whatever for sanitation, this disease has made progress among these Indians, until to-day, as stated by the Commissioner in the report to which I have referred, it is a matter of grave concern.

He says in that statement:

It is impossible to reduce the conditions to tables and figures. The experience of several years as health officer and as physician to two Indian schools has convinced me that fully 60 per cent of the younger generation has some form of tubercular infection, and 50 per cent of those of the age of puberty die of some form of the disease.

Then he states that there is a report from the Standing Rock Reservation that 75 per cent of all deaths result from tuberculosis. He also quotes from an Indian living on the Sisseton Reservation, who has lived there for fifty years, that fully 50 per cent of them die with this disease.

Now, to illustrate that it is not necessarily a conclusion that an Indian can only acquire tuberculosis by attending some Indian school, as suggested by the inquiry of the gentleman from Texas [Mr. Stephens], I want to call attention to one instance. Doctor Robinson refers to it in this statement. I happen to know the family, and I can say that

it was not due to the fact that the children were in school that the condition that is disclosed here resulted. He says:

One of the striking instances in point is the destruction of a family of a noted worthy chief, John Grass. In 1892 a white friend met him and his seven sons at a convocation of the tribe. These sons were stalwart fellows and apparently well.

In 1902, ten years thereafter, the friend again met the aged chieftain, who at once recognized the white man. He said: "You saw my boys; all gone, all died of the disease. I have no child left."

Commenting on that, he said:

It is peculiarly pathetic and appeals most emphatically to the Government for its amelioration. Most justly do these poor wards deserve some measure of relief. The Indians are not alone interested. The health of the white community is menaced by the plague spot which surrounds the agency.

Mr. Chairman, I have referred to this subject for the purpose of calling to the attention of this House the importance of some action, and some prompt action, being taken to check the disease among the Indians of the country, and to justify the action of the committee in putting in the bill a provision authorizing the Commissioner to investigate the subject and report fully to the next session of Congress.

Mr. Chairman, there is one further question to which I desire to refer before I conclude. That is the provision in the bill for an appropriation to be used in obtaining evidence and in prosecuting parties engaged in the sale of liquor to Indians. The Commissioner urges it very strongly in his report made for the fiscal year ending June 30, 1905. He states:

During the last year fresh efforts have been made by persons engaged in the liquor traffic to elude the law forbidding the introduction of liquor into the Indian country.

Up to last April whenever a person was convicted of selling liquor to an Indian it was never considered that there was a distinction as between an Indian who had taken his allotment and an Indian commonly known as a "reservation Indian." The Supreme Court, in a case entitled "The matter of Heff," held that where an Indian had taken his allotment under section 6 of the Indian allotment law he is a citizen of the State or Territory within which he resided, and that he is no longer subject to the jurisdiction of the United States. The effect of that decision has been most demoralizing among the Indians. Liquor is now sold to Indians almost as openly as to white men, and because of that fact largely I introduced at the earlier part of this session a bill which provides for an amendment to section 6 of the Indian allotment law, so that hereafter, when lands are allotted to Indians, citizenship is to be withheld until they receive their fee-simple patent. In other words, during the period of time that the Government elects to withhold the title to the land citizenship is also to be withheld and the United States will continue to exercise jurisdiction over such Indian. I speak of this because I expect to ask unanimous consent of this House within a very few days to have that bill passed. In the measure there is a provision giving to the Secretary of the Interior authority, in his discretion, whenever he believes an Indian has reached the stage of advancement and civilization where he is capable of managing his own affairs, to issue to such Indian a fee-simple patent, and with that will go full citizenship.

This bill now before the committee is filled with provisions authorizing the Secretary of the Interior to convey to Indians their allotments and relieve them from the trust features. The committee, in incorporating these provisions in the appropriation bill, followed in every instance the recommendation of the Secretary of the Interior. Our theory is that the Secretary of the Interior and the Indian Department is the Department of the Government that knows what is for the best interests of the Indian; that

knows when he has reached a stage capable of managing his own affairs; and, therefore, when it recommends that an Indian be given a fee simple patent for his allotment we put it in the Indian appropriation bill — and I may say that it is subject to a point of order — and in this respect the progress, advancement, and the best interests of the Indian may be very seriously hampered and interfered with unless we have a law such as I have proposed, and such as has been recommended by the Committee on Indian Affairs. It has the very strong recommendation of the Commissioner and is approved by the Secretary of the Interior. I hope that I may be recognized at some near date to call up the bill for consideration, and I trust that every Member of the House will see the necessity and importance for the enactment of such a measure.

In conclusion, Mr. Chairman — and I have not said as much as I wanted to on the subject — I desire to again say that the policy of the Government has been most generous toward its Indian wards. There has been little occasion in recent years for criticism of the administration of Indian affairs. There is no committee of this House that gives more careful consideration to its particular business than does the Committee on Indian Affairs, under the able administration of the distinguished gentleman who has been the chairman of that committee for so many years. There is no branch of the Indian service that he is not familiar with, and every measure that comes from that committee — not only the appropriation bill, but any other bill that has to do with Indian affairs — has behind it the belief on the part of the chairman and the committee that the bill is an honest measure and one that will promote the interest of the Indians and be for the best welfare. [Applause.]

[#21B]

McLaughlin report to Secretary of Interior dated February 12, 1907.

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

February 12, 1907

The Honorable,

The Secretary of the Interior.

Sir:

I have the honor to transmit herewith an agreement dated the 21st ultimo, entered into with the Indians of the Rosebud Agency, South Dakota, for the opening to settlement of all that part of the Rosebud Indian Reservation lying south of Big White River and east of range 25 west, of the sixth principal meridian in South Dakota, except such portions thereof as have been or may hereafter be allotted to Indians entitled thereto, including Indian children belonging on the Rosebud Indian Reservation who are living at the date of the approval of the Act ratifying the agreement and who have not heretofore received an allotment, which agreement was negotiated by me under instructions prepared in the Office of Indian Affairs, dated December 5, 1906, bearing Departmental approval of the same date.

The agreement is along the lines suggested by Indian Office instructions above referred to, and, as may be seen by reference to the ninety-four typewritten pages of council proceedings transmitted herewith, every provision of the agreement was thoroughly explained to the Indians in council and thoroughly understood by each and all of them before signing.

The Indians in the beginning were not disposed to consider the question, nor to entertain any proposition for the opening of the said tract to settlement; but after discussing the matter in all its phases and the Indians having held several councils over it among themselves, they submitted a proposition demanding \$6 per acre for all land filed upon within three months after it is opened for settlement; \$5 per

acre for all land filed upon after the expiration of three months and within six months after the date of opening; and \$4 per acre for all land filed upon after six months and within four years from the date of opening; the latter price to include the school lands, sections 16 and 36, or an equivalent in each township; and that all land remaining unentered after the expiration of four years from the date of opening to be sold at public auction to the highest bidder for cash.

I was unable to bring the Indians to recede from their demand for \$6 per acre for all land filed upon within three months from opening, and their concurrence at a less price for the higher class land could not be obtained; but they finally agreed to accept \$4.50 per acre for the second class land and \$2.50 per acre for all land remaining unentered after the expiration of six months after the same shall have been opened to settlement, which latter price (\$2.50 per acre) includes sections 16 and 36, or the equivalent of similar character and value in each township.

The weather was exceedingly cold and disagreeable and the roads in bad condition throughout our negotiations, notwithstanding which the councils were very well attended, a fair representative assemblage of the Indians being present at each council held.

After a full discussion of the different propositions, I prepared the agreement embracing the provisions as agreed upon, which, after being read and explained to the Indians assembled, was accepted and the agreement was immediately signed by 43 Indians of those present. Then, in order to obtain the required number of signatures and make it unnecessary for the Indians to travel long distances from their homes to the Agency for that purpose in the cold weather, I visited the headquarters of the several districts of the reservation where the Indians of the respective districts met me, thus visiting Spring Creek, Cut Meat, Butte Creek, Bad Nation, Big White River, Bull Creek, and Ponca Creek

stations, at which points I explained the provisions of the agreement to the Indians assembled and received the signatures of all concurring in the agreement.

Some opposition was met with the beginning, particularly in the Cut Meat and Black Pipe districts, but it was gradually overcome, and I am of the opinion that had the weather been pleasant so that the Indians could have been reached, that the signatures of nearly every Indian of the reservation would have been obtained, there being practically no opposition after the agreement was reached and fully understood by the Indians, and most of those who were in opposition for a time, signed the agreement before I left the Agency.

There are 1368 male adult Indians over 18 years of age belonging on the Rosebud Reservation, 705 of whom have signed the agreement, being a majority of 42 of the male adults, and there is not much doubt but that it would have been unanimous, or nearly so, if all the interested Indians could have been reached.

In conclusion I desire to state that I regard the agreement reasonable in its provisions, and that the lands in question are worth the prices stipulated for the respective classes; and I also believe that fully seventy-five per cent of the lands to be thus opened will be filed upon within the first three months after the tract is opened to entry, the price of which (the first three months' entry) is \$6 per acre. I base this opinion upon the great rush that occurred when the Gregory County portion of the Rosebud Reservation was opened to settlement in 1904. And, from a fair knowledge of the character of the lands opened in Gregory County, also of that in the tract proposed to be opened, I regard the latter to be in every respect equal to that of Gregory County which adjoins it on the east, and believing that a greater amount will be realized for the Indians by the provisions of the enclosed agreement than by any other system, I respectfully recommend its approval and ratification.

I desire to add that quite a number of the Indians before signing the agreement expressed themselves as fully concurring in all its provisions, but wanted it distinctly understood that should the agreement fail of ratification just as it was written, they did not wish their names transferred to appear as concurring in H.R. bill 20527, 59th Congress, 2d session, or any other bill of a similar character, which they imagined was done with their signatures to the unratified agreement of September 14, 1901, when Gregory County lands were opened by the Act of April 23, 1904.

I am, Sir,

Very respectfully,

Your obedient servant,

James McLaughlin

U.S. Indian Inspector

2 enclosures.

[#22E]

Proclamation of August 24, 1908, 35 Stat. 2203

A PROCLAMATION

Whereas by the Act approved March 2, 1907 (34 Stat., 1230), the Congress directed that all that part of the Rosebud Indian Reservation lying south of the Big White river, and east of Range 25 west, of the Sixth Principal Meridian, except all Sections 16 and 36, which were granted to the state of South Dakota, and excepting also such parts thereof as have been or shall hereafter be either allotted to Indians, selected by said state, or reserved for townsite purposes, be disposed of under the general provisions of the homestead laws of the United States, and be opened to settlement, entry and occupation only in such manner as the President might prescribe by proclamation;

Now, therefore, I, Theodore Roosevelt, President of the United States, by virtue of the power and authority vested in me by said Act of Congress, do hereby prescribe, proclaim

and make known that all of said lands which shall remain unallotted to Indians, unselected by said state and unreserved for townsites, on the first day of March, A.D. 1909, will be opened to settlement and entry, under the general provisions of the homestead laws, and of said Act of Congress, in the manner herein prescribed as follows, and not otherwise:

1. Any person who is qualified to make a homestead entry may, between 9:00 o'clock a.m., on Monday, October 5, and 4:30 o'clock p.m., on Saturday, October 17, 1908, and not thereafter, present to James W. Witten, Superintendent of the Opening, or to some person acting for him, at either the town of Dallas or the town of Gregory, in Gregory county, South Dakota, either by ordinary mail or otherwise, but not by registered mail, a sealed envelope which bears no distinctive marks indicating the name of the applicant, and which contains his application for registration, hereinafter prescribed.

2. All applications for registration must be made on forms prescribed and furnished by the General Land Office, and must show that the applicant is qualified to make homestead entry, and state his age, height, weight and postoffice address; and be sworn to at one of the following named towns, Chamberlain, Dallas, Gregory or Presho, in the state of South Dakota, or O'Neill or Valentine, in the state of Nebraska, before a United States Commissioner, Judge or Clerk of a Court of Record, or a Notary Public, authorized under the laws of said states to administer oaths in said towns.

3. Any person filing more than one affidavit, or in any other than his true name, shall be denied the privilege he might have otherwise secured, under this drawing, except, that any honorably discharged soldier or sailor entitled to the benefits of Section 2304 of the Revised Statutes of the United States, as amended by the Act of March 1, 1901 (31 Stat., 847), may be represented by an agent of his own selec-

tion, for the purpose of executing and presenting his application for registration, due authority therefor being shown, but no person shall be permitted to act as agent for more than one such soldier or sailor, and the agents of all soldiers and sailors must execute the affidavits required of them at one of the towns named above, and present the same in the same manner in which persons who are not soldiers are required to present their applications.

Envelopes showing, on the outside, distinctive marks of any character, indicating the name of the person whose application is inclosed therein, shall be eliminated from the drawing.

4. Beginning at 10:00 a.m., on October 19, 1908, and continuing thereafter as long as may be necessary, there shall be impartially taken and drawn from the whole number of envelopes so presented, such number of them as may be necessary to carry into effect the provisions of this Proclamation; and the applications for registration contained in the envelopes so drawn shall, when they are correct in form and execution, be numbered serially in the order in which they are drawn, and the number thus assigned shall fix and control the order in which applications to enter may be presented, after the lands shall become subject to entry.

5. Immediately after the drawing, a list of the successful applicants, showing the number assigned to each of them, will be conspicuously posted at the place of registration, and furnished to the press for publication as a matter of news, and a notice will be promptly mailed to each person whose name is drawn and numbered, informing him of the number assigned to him, and of the date on which he must apply to enter, and later he will, in due time, be furnished with a copy of the regulations controlling the method of entry, and be supplied with a map showing the lands subject to entry. The notice will be mailed to the postoffice address given by the applicant in his application for registration, except in cases where the applicant requests otherwise, and any appli-

cant who changes his postoffice address before November 1, 1908, should, at once, inform the Superintendent of the Opening of the change.

6. Commencing at 9:00 a.m., on March 1, 1909, and continuing thereafter on such dates as may be fixed by the Secretary of the Interior, persons holding numbers assigned to them under this Proclamation will be permitted to present their applications to enter (or their declaratory statements, in cases where the applicant is entitled to make entry as a former-soldier), in the order in which their applications for registration were drawn and numbered.

7. If any person fails to apply to enter or to file a declaratory statement, if he is entitled to do so, as a former soldier, on the day assigned to him for that purpose, or, if he presents more than one application for registration, or presents an application in any other than his true name, he will forfeit his right to enter any of said lands prior to September 1, 1909.

8. None of these lands shall become subject to settlement or entry prior to September 1, 1909, except in the manner prescribed herein, and all persons are admonished not to make any settlement prior to that date, on any lands not covered by entries made by them under this Proclamation.

9. The Secretary of the Interior shall make and publish such rules and regulations as may be necessary and proper to carry into full force and effect the manner of settlement, occupation and entry, as herein provided for, and he shall, prior to the first day of March, reserve from said land such tracts for townsite purposes as, in his opinion, may be required for the future public interests.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this 24th day of August in the year of our Lord one thousand nine hundred

[SEAL] and eight, and of the Independence of the United States the one hundred and thirty-third.

Theodore Roosevelt

By the President:

Alvey A. Adee

Acting Secretary of State.

[#34B]

McLaughlin report to Secretary of Interior dated April 29, 1909.

**DEPARTMENT OF THE INTERIOR
UNITED STATES INDIAN SERVICE**

Rosebud Agency, South Dakota

April 29, 1909.

Subject:

Opening part of

Rosebud Reservation

The Honorable

The Secretary of the Interior,

Washington, D. C.

Sir:

I have the honor to report the result of conferences held by me with the Rosebud Indians, South Dakota, with reference to the opening a part of their reservation to settlement, as contemplated by Senate Bill 7379, — Sixtieth Congress, Second Session, which conferences were conducted under Departmental instructions of December 21, 1908, and 2nd instant, respectively.

While here last month, supervising the payment to certain Sisseton and Wahpeton beneficiaries, about sixty of the leading Indians of the reservation met me at the agency by request on the 11th ultimo, to whom I explained the provisions of the Senate bill above referred to, for the pur-

pose of preparing their minds for the more formal council which Department letter of December 21, 1908, directed me to later hold with them in connection with the provisions of said bill, and I transmit herewith (Exhibit "A") a transcript of the stenographic notes of the Indian speeches taken by M. A. Buffalo, stenographer, on that occasion, all of which speeches, as may be seen by the minutes, were in opposition to the proposed opening.

Upon returning here on the 14th instant, I had the Indians of the reservation notified to meet me in council at the agency on the 21st, but the weather being unfavorable, and roads in bad condition, only about 100 Indians were present at our first formal council, and at the request of the assembled Indians, an adjournment was taken until the 26th instant, on which latter date about 250 of the leading male adults of the reservation were present.

The minutes of our conference transmitted herewith (Exhibit B) show that I explained the said Senate bill to the Indians very clearly and that all of them fully understand its provisions, also that, with the exception of a few of the older men, the opening of that part of the reservation lying north of the 10th Standard Parallel is concurred in by the interested Indians, but none of them favor the opening of the two tiers of townships in the eastern part of Meyer County.

The strip of two townships in width in the eastern part of Meyer County included in the bill, extends from the line between the States of Nebraska and South Dakota to the 10th Standard Parallel of latitude north, and embraces ten full townships and two half townships, containing at the present time, as stated to me by Special Allotting Agent, J. H. Scriven, 135,520 acres of unallotted and unreserved land, exclusive of the school sections, leaving surplus lands in this strip equivalent to 847 homesteads of 160 acres each.

Mr. Scriven also stated that the lands remaining unallotted and unclaimed in the 45 townships and fractional townships of the Rosebud Reservation, embraced in the

strip lying north of the 10th Standard Parallel of latitude, exclusive of the school sections, leaves a surplus of 295,680 acres, being equivalent to 1848 homesteads of 160 acres each, but that much of this surplus land will be rough and undesirable tracts.

A great many Indians of the reservation have called upon me during my present visit here, and I discussed the contemplated opening with all of those thus calling, and since our first formal council of the 21st instant, at which I explained the proposed legislation to those assembled, the sentiment in favor of opening the strip lying north of the 10th Standard Parallel of latitude has steadily increased until concurrence in the opening of said strip is now practically unanimous, the nonconcurring element being a few of the older men, as voiced by speakers, High Pipe, Turning Bear and Dog Trail, as set forth on pages 17 and 18 of the council minutes, and opposition to the opening of the northern strip is not very strenuous, as evidenced by the fact that during the past two days several of the older Indians of the reservation have called upon me to express their concurrence in the opening of the northern strip, provided the two tiers of townships in the eastern part of Meyer County remain a part of the diminished reservation.

The Indians, in council and out of council, protested against the grazing of cattle on this reservation, either under acreage lease or by the permit system, their contention being that these range cattle destroy their cultivated fields and meadow lands, thus making it impossible for them to raise any crops or increase their own herds, and that the small revenue derived from such grazing permits, about \$5.00 per capita, is insignificant, when the loss occasioned the Indians thereby is taken into consideration.

Replying to this contention of the Rosebud Indians, I advised them that the question of grazing on this reservation was foreign to the object of my visit to their agency, and that it was a matter to be determined by their Agent and the In-

dian Office, but they insisted upon my mentioning it in my report, which I finally promised to do, hence my referring to it here.

In conclusion I desire to state that a large majority of the Indians of the Rosebud reservation, and more particularly nearly all of the younger men, being favorable to the opening to settlement, under the provisions of Senate bill 7379, — 60th Congress, 2nd Session, of that part of their reservation lying north of the 10th Standard Parallel of latitude, and as all allotments to be made therein can doubtless be completed this year, there appears to me no good reason why this northern strip should not be opened as proposed in the said bill.

As to the opening of the two tiers of townships in the eastern part of Meyer County, proposed by the said bill, I have no doubt but that the Indians would gracefully accept any action of Congress in the premises, but with the commendable manner in which they have assented to the opening of that part of their reservation lying north of the 10th Standard Parallel, and their present unwillingness to concur in the opening of the two tiers of townships in the eastern part of Meyer County, I believe that it would be advisable to defer the opening of the said two tiers of townships for the time being.

Very respectfully,

Your obedient servant,

James McLaughlin

U.S. Indian Inspector.

2 incl.

[#35E]

Proclamation of June 29, 1911, 37 Stat. 1691.

A PROCLAMATION

I, WILLIAM H. TAFT, President of the United States of America, by virtue of the power and authority vested in me

by the Acts of Congress approved May 27, 1910 (36 Stat., 440), and May 30, 1910 (36 Stat., 448), do hereby prescribe, proclaim and make known that all the non-mineral, unallotted, unreserved lands within the Pine Ridge and Rosebud Reservations in the State of South Dakota, which have been classified under said Acts of Congress into agricultural land of the first class, agricultural land of the second class, and grazing land shall be disposed of under the general provisions of the homestead laws of the United States and of said Acts of Congress, and be opened to settlement and entry, and be settled upon, occupied and entered in the following manner, and not otherwise:

1. All persons qualified to make a homestead entry may, on and after October 2, 1911, and prior to and including October 21, 1911, but not thereafter, present to James W. Witten, Superintendent of the Opening, at the City of Gregory, South Dakota, by ordinary mail, but not in person or by registered mail or otherwise, sealed envelopes containing their applications for registration, but no envelope must contain more than one application; and no person can present more than one application in his own behalf and one as agent for a soldier, sailor, or for the widow or minor orphan child of a soldier or sailor, as hereinafter provided.

2. Each application for registration must show the applicant's name, postoffice address, age, height and weight, and be sworn to by him at either Chamberlain, Dallas, Gregory or Rapid City, South Dakota, before some Notary Public designated by the Superintendent.

3. Persons who were honorably discharged after ninety days' service in the Army, Navy or Marine Corps of the United States, during the War of the Rebellion, the Spanish-American War, or the Philippine Insurrection, or their widows or minor orphan children, may make their applications for registration either in person or through their duly appointed agents, but no person can act as agent for more than one such applicant, and all applications

presented by agents must be signed and sworn to by them at one of the places named and in the same manner in which other applicants are required to swear to and present their applications.

4. Beginning at ten o'clock a.m. on October 24, 1911, at the said City of Gregory, and continuing thereafter from day to day, Sundays excepted, as long as may be necessary, there shall be impartially taken and selected indiscriminately from the whole number of envelopes so presented, such number thereof as may be necessary to carry into effect the provisions of this Proclamation, and the applications for registration contained in the envelopes so selected shall, when correct in form and execution, be numbered serially in the order in which they are selected, beginning with number one, and the numbers thus assigned shall fix and control the order in which the persons named therein may make entry after the lands shall become subject to entry.

5. A list of the successful applicants, showing the number assigned to each of them, will be conspicuously posted and furnished to the press for publication as a matter of news, and a proper notice will be promptly mailed to each person to whom a number is assigned.

6. Beginning at nine o'clock a.m. on April 1, 1912 and continuing thereafter on such dates as may be fixed by the Secretary of the Interior, persons holding numbers assigned to them under this proclamation will be permitted to designate and enter the tracts they desire as follows:

When a persons name is called, he must at once select the tract he desires to enter and will be allowed fifteen days following date of selection to complete entry at the proper local land office. During that period of fifteen days, he must file his homestead application at the proper local land office, accompanying the same with the usual filing fees and commissions and in addition thereto, one-fifth of the appraised value of the tract selected. To save expense incident

to an additional trip to the land and to return to the local land office, he may, following his selection, execute his homestead application for the tract selected within the proper land district and file same in the proper local land office, where it will be held awaiting the payment of the fees and commissions and one-fifth of the appraised value of the land. In that event, the payment must be made within the fifteen days following date of selection. Payments can be made *only* in cash or by postoffice money orders made payable to the receiver of the proper local land office. These payments may be made in person, through the mails or any other means of agency desired, but the applicant assumes all responsibility in the matter. He must see that the payments reach the local office within the fifteen days allowed, and where failure occurs in any instance where the application has been filed in the local office without payment, as herein provided for, the application will stand rejected without further action on the part of the local officers.

In the case of declaratory statements, allowable under this opening, the same course may be pursued, except that the filing fees must be paid within the fifteen days following date of selection, the party having six months after filing within which to complete entry. Soldiers or sailors or their widows or minor orphan children, making homestead entry of these lands must make payments of fees and commissions and purchase money as is required of other entrymen. All persons making homestead entry of these lands must pay the remaining four-fifths of the purchase money in five equal installments. These payments will become due at the end of two, three, four, five and six years after the date of entry, unless the entry is commuted. If commutation proof is made, all the unpaid installments must be paid at that time. If any entryman fails to make any payment when it becomes due, all his former payments will be forfeited and his entry will be canceled.

No person can select more than one tract or present more than one application to enter or file more than one declaratory statement in his own behalf.

7. If any person fails to designate the tract he desires to enter on the date assigned to him for that purpose, or if, having made such designation, he fails to perfect it by making entry or filing and payments as above provided, or if he presents more than one application for registration, or presents an application in any other than his true name, he will forfeit his right to make entry or filing under this proclamation.

8. None of these lands opened to entry under this proclamation shall become subject to settlement prior to that hour on lands not covered by entries or filings made by them under this proclamation. At nine o'clock a.m. on October 1, 1912, all of said lands which have not then been entered under this proclamation will become subject to settlement and entry under the general provisions of the homestead laws and the said Acts of Congress.

9. The Secretary of the Interior shall make and prescribe such rules and regulations as may be necessary and proper to carry this proclamation and the said Acts of Congress into full force and effect.

In Witness Whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 29th day of June in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-fifth.

Wm. H. Taft

By the President:

P. C. Knox

Secretary of State.

[#42A]

Instructions to Inspector McLaughlin dated May 22, 1911.

Inspector James McLaughlin.

Washington, D. C.

Sir:

There are enclosed herewith copies of Senate Bills 110, 111, 1624, 1127, and 874, authorizing the sale and disposition of the surplus and unallotted lands in Todd and Bennett counties, Rosebud Reservation; in Washabaugh county, Pine Ridge Reservation; in the Crow Creek Indian Reservation, and the Lower Brule Indian Reservation, and the allotment to certain members of the Ponca Tribe of Indians from the surplus or unallotted lands within the Rosebud Indian Reservation, South Dakota, respectively.

As soon as your other assignments will permit, it is desired that you take up the provisions of said bills with the members of the interested tribes for the purpose of ascertaining their views with regard thereto. Detailed instructions appear unnecessary in view of your several similar assignments in the past.

Please submit your reports in ample time to permit a full consideration of the subject-matter of the proposed legislation prior to the convening of the Congress at its regular session in December next.

Very respectfully,

Acting Secretary

Enclosures.

[#42B]

McLaughlin report to Secretary of Interior dated November 3, 1911.

**DEPARTMENT OF THE INTERIOR
UNITED STATES INDIAN SERVICE**

Rosebud Agency, South Dakota.

November 3, 1911.

The Honorable,

The Secretary of the Interior,

Washington, D. C.

Sir:

Under Departmental instructions of May 22nd last I have the honor to report result of council held by me with the Indians of the Rosebud Agency, South Dakota, with reference to the sale and disposition of the surplus lands of their reservation, as provided in Senate Bill 110, 62nd Congress, 1st Session, which Bill embraces all of the surplus and unallotted lands of the Rosebud Reservation, exclusive of certain tracts, aggregating 40,302.21 acres, reserved for agency, Board School, Day Schools, Issue Stations, Timber reserve and religious institutions, also sections sixteen and thirty-six in each township of the area embraced in the Bill, aggregating 50,880 acres, granted to the State of South Dakota.

My council with the Rosebud Indians with reference to this proposed opening of the remainder of their surplus lands was held at the Rosebud Agency on the 1st inst., with 85 of the leading Indians of the reservation present. Owing to the inclemency of the weather and the long distance that some of the Indians had to travel to reach the Agency from their homes, the council was not so largely attended as it doubtless would, had the weather been more favorable, but the assemblage was a good representative gathering of the leading men of the reservation, and, being well acquainted with the Rosebud Indians, know that those attending the council represented the sentiment of the Indians of the reservation in all tribal matters, and that the conclusion

voiced by them would be concurred in by the Indians of the reservation.

As may be seen by the minutes of council, transmitted herewith, Exhibit A, I explained to the assembled Indians the said Senate Bill very clearly and know that they fully understood its several provisions, and the recorded speeches of the respective spokesmen, who had been designated by the tribe to discuss the matter in our council, show that a strong sentiment of opposition to the opening of the remainder of their surplus lands prevails among the Indians of the Rosebud Reservation.

The Indians appealed very feelingly for the retention of the remaining small acreage of their surplus land for allotments to children born to them, and it is believed that all of the agricultural lands of the diminished Rosebud reservation would thus be exhausted in the next two years.

The diminished reservation of the Rosebud Indians is now embraced in Todd County, South Dakota, the boundary line between the Rosebud and Pine Ridge reservations, having been made the western boundary of Todd County, by Act of the South Dakota legislature, approved March 2, 1911, and the said boundary line between the Rosebud and Pine Ridge reservations having also been made the eastern boundary of Bennett County, therefore there is no portion of Bennett county, as now defined, within the Rosebud reservation.

From figures furnished me by Special Allotting Agent John H. Scriven, the county of Todd, which now embraces all of the unopened lands of the Rosebud Indian Reservation, contains 889,403.52 acres, of which 636,300.61 acres have been allotted to Indians in addition to which the following reservations have been made, viz:

Reserve for Agency	16,073.22 acres
Reserve for Boarding School	6,604.22 acres
Reserve for Day Schools	1,116.35 acres
Reserve for Issue Stations	320.00 acres

Reserve for Churches and cemeteries	1,569.31 acres
Timber Reserve	14,619.71 acres
<hr/>	
Total reserved	40,302.81 acres
State School lands within Todd County	50,880.00 acres
<hr/>	
	91,182.81 acres

This 91,182.81 acres of reserved land added to the 636,300.61 acres allotted to Indians aggregating 727,483.42 acres, when taken from the 889,403.52 acres contained in Todd County, leaves 161,920.10 acres of surplus and unallotted lands within the diminished Rosebud Reservation, but Mr. Scriven, Special Allotting Agent, who has been engaged in allotment work on this reservation for the past four years, and familiar with the character of the land on the entire reservation, stated to me that there are not to exceed 50,000 acres of good land remaining unallotted within the Rosebud Indian reservation; that, at the least, 100,000 acres of the 161,920.10 acres of remaining surplus lands of the reservation are of inferior quality, the greater portion being sand hills and barren buttes of but little value.

In the past eight years the Rosebud Indians have consented to the opening of fully three-fourths of their original reservation, that is, Gregory County in 1904, Tripp County in 1909, and Mellette County, recently appraised and registered for, and open to entry April 1st next. With the diminished reservation of the Rosebud Indians being now only about one fourth of its area of eight years ago, it would appear that the opening of the remainder of their surplus lands, which are said to be very inferior in quality, might better be deferred for the present, and until the Mellette County lands, which are said to be very inferior in quality, might better be deferred for the present, and until the Mellette County lands, now being opened have been filed upon, and more especially until after the surplus lands in

Washabaugh County, in the Pine Ridge reservation have been opened, the Pine Ridge Indians having at the present time three-fourths of their original reservation intact, while the Rosebud Indians, whose reservation adjoins the Pine Ridge reservation on the east, have had their reservation diminished in the past eight years to one-fourth of its original area.

The Rosebud Indians are well disposed and will, I am confident, acquiesce in the opening of their surplus lands under the provisions of the said Senate Bill, which if enacted into law may, on the whole, be for their best interests, but they having so commendably consented to each of the three cessions of their reservation lands in the past eight years, if this proposed opening were deferred for a year or two it would be very gratifying to them and the public interest would not be seriously affected thereby.

In connection with the proposed opening under the provisions of the said Senate Bill, I desire to invite your attention to certain erroneous wording in the first Section, lines 6 and 7, page 1 of the Bill which reads: "lying and being within the counties of Todd and Bennett", and as hereinbefore stated there is no portion of Bennet County now within the Rosebud reservation, the said clause should therefore be made to read: "lying and being within the county of Todd."

Furthermore, the provision in the first Section of said bill, lines 10 to 14, page 2, is superfluous, which reads: "That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation."

The said Senate Bill provides for the opening of all the surplus lands of the Rosebud Reservation and should the bill become a law there would be no *diminished Rosebud*

reservation. Therefore, the above quoted provision is unnecessary and should be eliminated.

Very respectfully,

Your obedient Servant,

James McLaughlin

Inspector

(Signed)

JMcL-(P)

1 enclosure

[#42C]

Letter from Secretary of Interior to Senator Gamble, 1911.

Hon. Robert J. Gamble,

Chairman, Committee on Indian Affairs,

United States Senate.

Sir:

I have the honor to refer to Departmental letter of May 19, 1911, regarding Senate Bill, No. 110, 62nd Congress, First Session, providing for opening all surplus lands within the diminished Rosebud Reservation, South Dakota.

Inspector James McLaughlin met representatives of the Rosebud Indians on November 1, 1911, for the purpose of discussion with them the pending bill. He found the Indians decidedly opposed to the bill, principally because by successive openings within the past few years their reservation has been reduced to less than one-fourth of its original area. Gregory County was opened in 1904, under the Act of April 23, 1904 (33 Stats. L., 254); Tripp County in 1909, under the Act of March 2, 1907 (34 Stats. L., 1230), and Mellette County will be opened in 1912, under the Act of May 30, 1910 (36 Stats. L., 448); the President's proclamation therefor having been issued June 29, 1911. This leaves within the diminished reservation at this time the lands in Todd County only, which, from the Inspector's report (copy enclosed), contains only 889,403 acres, of which 636,300

acres have heretofore been allotted and 40,302 acres reserved for school, agency, missionary and tribal purposes.

This would leave 212,801 acres unallotted and unreserved, of which, it is established, 50,880 acres would pass to the State of South Dakota as "school lands" should the bill become a law. There would remain, therefore, approximately 161,921 acres to be disposed of to homestead settlers.

The Special Allotting Agent who has been working within this reservation for a number of years, and, therefore, familiar with local conditions, advises the Inspector that not to exceed 50,000 acres of good land and remain undisposed of within this reservation, and that the greater part of the surplus lands consists of sand hills and barren buttes of but little value.

In view of the successive reductions made in this reservation during the past few years, the fact that the Indians are decidedly opposed to opening the diminished reservation at this time and that there will be but little desirable land to place on the market, should the bill become a law, I have the honor to recommend that no further action be had on the bill at this session of the Congress. To accede to the wishes of the Indians at this time would but promote a more kindly spirit among them and greatly facilitate administrative action of their affairs.

Respectfully,

Secretary

12-VAR-1

[#48A]

Petition of Rosebud Sioux Indians to the Commissioner of Indian Affairs dated February 18, 1914.

Capital Hotel, Washington, D. C.
February 18, 1914.

Honorable Cato Sells,
Commissioner, Indian Affairs.

Our Friend:

The undersigned are members of a delegation selected by the Rosebud band of Sioux Indians, belonging to their reservation in South Dakota, to present matters to you which are of deep interest to their welfare.

1. Section 17, of the agreement with the Sioux tribe, approved by Congressional action March 2, 1889, stipulates as follows: "Provided, That each head of a family or single person over the age of 18 years, who shall have or may hereafter take his or her allotment of land in severalty, shall be provided with", etc. This has reference to the giving of allotment benefits to the parties designated in the portion of the Section quoted above, and related solely to the act of taking their allotments. In many instances allotments have been taken by parties who would be entitled to these benefits but owing to the pressure of business in the Indian Department of the Government the selections of allotments were not approved for several years and the allottees, or some of them, have died during the period the schedule for allotment was pending, and their heirs were not given the benefits above noted, as contemplated by Section 17, the Indian Department holding that the meaning of "taking allotments," is to have the allotments *approved* before any right exists to secure the benefits provided for in that Section of the law.

2. We are opposed to the opening to settlement of Todd County, within our Reservation, by outsiders. We are poor, our lands are suitable, primarily, for grazing, and especially is this the case with the surplus lands in Todd County which the politicians are seeking to have thrown open to outside settlement. There may be remaining about one hundred and fifty quarter sections of land which are not allotted to our tribe; we want this land allotted to our children who have no allotments; we need the land for grazing, and it is chiefly fit only for grazing purposes. If the land in Todd County was

sold we would realize a very small sum from it; it will be of far more benefit to us to use it for grazing our stock upon.

3. We have been confronted with what appears to us a great wrong from the fact that under the law a white man who marries into our tribe becomes heir to the lands allotted to members of our tribe upon their death, under the laws, as we now understand, of the State of South Dakota. We want the land of deceased allottees to go to the Indian parent and to brothers and sisters of deceased allottees.

4. We desire our rights under what is known as the "Black Hills" treaty, fully determined, so that we may know what action we should take to protect our rights thereunder, if it is thought best to appeal to the Courts for those rights to which we believe we are entitled to. Therefore we ask that you may give us a statement of what the Government will do for us under the Black Hills Treaty or agreement.

5. We desire that the proceeds derived from the sale of lands in Mellette County, formerly a part of our reservation, shall be paid to each Indian member of our tribe according to his or her choice, whether in cash, in live stock or farming implements, the selection to be made by the head of the family, the same manner as the head of a family is now entitled to draw the per capita payments of the children.

6. We desire that all members of our tribe who have reached sixty years of age, and the infirm, may be given the full ration according to treaty and agreement with the Government.

7. We desire that the "allotment benefits" shall be given the married women, members of our tribe, as provided by Article five (5), of the Lower Brule (Sioux) agreement of 1898.

8. We desire that an Indian Court may be established to

control the affairs of our tribe which it may be proper to refer to such a court for settlement.

9. We desire that you may secure authority of law to provide a pension for Indian Police who are rendered unfit to support themselves either by long service for the Government or by accident in the line of duty.

10. We desire to be fully informed regarding the right of the State of South Dakota to tax our real or personal property, and what kind of property which we own is subject under the laws to taxation.

11. Our tribe has already petitioned through our Superintendent for a per capital payment of \$30. from the proceeds of the lands of Tripp County which has been sold. This, we hope, will not be long delayed since we need the funds to buy seeds for this season, now near at hand, planting time being but a few weeks away.

12. We desire to be informed whether or not the provision of the Treaty, made with our tribe April 29, 1868, which, in Article 19, stipulates that no portion of our land shall be sold unless three-fourths of the male adult Indians shall first agree to the same, is still in force, and whether the Government is now bound by that provision of treaty? We are bound by our promises, and we think that the Government should fulfill its promises.

On behalf of the Rosebud band of Sioux Indians, Rosebud Agency, S. D., by the Delegates of said tribe.

Clement W. Soldier
Wm. Thunder Hawk
Henry Horse Soo King
Capt. Eugene Little
Silas Standing Elk
Henry Hollow Horn Bear
High Pipe (his mark)
Brave Bind (his mark)

Reuben Quick Bear,
Chairman

Attest:
Charles C. Jackett, Interpreter.

[#57]

Proclamation of April 11, 1892, 27 Stat. 1017.

A PROCLAMATION

Whereas, by the third article of the treaty between the United States of America and the Sisseton and Wahpeton bands of Dakota or Sioux Indians, concluded February 19, 1867, proclaimed May 2, 1867 (15 U.S. Statutes, p. 505), the United States set apart and reserved for certain of said Indians certain lands, particularly described, being situated partly in North Dakota and partly in South Dakota, and known as the Lake Traverse Reservation; and

Whereas, by agreement made with said Indians residing on said reservation, dated December 12, 1889, they conveyed, as set forth in article one thereof, to the United States, all their title and interest in and to all the unallotted lands within the limits of the reservation set apart as aforesaid remaining after the allotments shall have been made, which are provided for in article four of the agreement, as follows: "that there shall be allotted to each individual member of the bands of Indians, parties hereto, a sufficient quantity, which, with the lands heretofore allotted, shall make in each case one hundred and sixty acres, and in case no allotment has been made to any individual member of said bands, then an allotment of one hundred and sixty acres shall be made to such individual"; and

Whereas, it is provided in article two of said agreement, "That the cession, sale, relinquishment, and conveyance of the lands described in article one of this agreement shall not

take effect and be in force until the sum of \$342,778.37, together with the sum of \$18,400, shall have been paid to said bands of Indians, as set forth and stipulated in article third of this agreement"; and

Whereas, it is provided in the act of Congress approved March 3, 1891 (26 U.S. Statutes, pp. 1036-1038, Sec. 30), accepting and ratifying the agreement with said Indians:

"That the lands by said agreement ceded, sold, relinquished, and conveyed to the United States shall immediately, upon the payment to the parties entitled thereto of their share of the funds made immediately available by this act, and upon the completion of the allotments as provided for in said agreement, be subject only to entry and settlement under the homestead and townsite laws of the United States, excepting the sixteenth and thirty-sixth sections of said lands, which shall be reserved for common school purposes, and be subject to the laws of the State wherein located: *Provided*, That patents shall not issue until the settler or entryman shall have paid to the United States the sum of two dollars and fifty cents per acre for the land taken up by such homesteader, and the title to the lands so entered shall remain in the United States until said money is duly paid by such entryman or his legal representatives, or his widow, who shall have the right to pay the money and complete the entry of her deceased husband in her own name, and shall receive a patent for the same," and

Whereas, Payment as required by said act, has been made by the United States; and

Whereas, Allotments as provided for in said agreement, as now appears by the records of the Department of the Interior will have been made, approved, and completed, and all other terms and considerations required will have been complied with on the day and hour hereinafter fixed for opening said lands to settlement.

Now, therefore, I, Benjamin Harrison, President of the United States, do hereby declare and make known that all

of the land embraced in said reservation, saving and excepting the lands reserved for and allotted to said Indians, and the lands reserved for other purposes in pursuance of the provisions of said agreement and the said act of Congress ratifying the same and other, the laws relating thereto will, at and after the hour of twelve o'clock noon (central standard time) on the fifteenth day of April, A.D. eighteen hundred and ninety-two, and not before, be opened to settlement under the terms of and subject to all the terms and conditions, limitations, reservations, and restrictions contained in said agreements, the statutes above specified, and the laws of the United States applicable thereto.

The lands to be opened for settlement are for greater convenience particularly described in the accompanying schedule, entitled "Schedule of lands within the Lake Traverse Reservation opened to settlement by proclamation of the President dated April 11, 1892," and which schedule is made a part hereof.

Warning, moreover, is hereby given that until said lands are opened to settlement as herein provided, all persons, save said Indians, are forbidden to enter upon and occupy the same or any part thereof.

And further notice is hereby given that it has been duly ordered that the lands mentioned and included in this Proclamation shall be, and the same are attached to the Fargo and Watertown land districts, in said States, as follows:

1. All that portion of the Lake Traverse Reservation, commencing at the northwest corner of said reservation; thence south 12 degrees 2 minutes west, following the west boundary of the reservation to the new seventh standard parallel, or boundary line between the States of North and South Dakota; thence east, following the new seventh standard parallel to its intersection with the north boundary of said Indian reservation; thence northwesterly with said boundary to the place of beginning, is attached to the Fargo

land district, the office of which is now located at Fargo, North Dakota.

2. All that portion of the Lake Traverse Reservation, commencing at a point where the new seventh standard parallel intersects the west boundary of said reservation; thence southerly along the west boundary of said reservation to its extreme southern limit; thence northerly along the east boundary of said reservation to Lake Traverse; thence north with said lake to the northeast corner of the Lake Traverse Indian Reservation; thence westerly with the north boundary of said reservation to its intersection with the new seventh standard parallel, or boundary line between the States of North and South Dakota; thence with the new seventh standard parallel to the place of beginning, is attached to the Watertown land district, the office of which is now located at Watertown, South Dakota.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this eleventh day of April, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and sixteenth.

Benj. Harrison

By the President:

James G. Blaine

Secretary of State.

[#58]

Act of March 2, 1889, 25 Stat. 888

Chap. 405. — An act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations and to secure the relinquishment of the Indian title to the remainder, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following tract of land, being a part of the Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Pine Ridge Agency, in the Territory of Dakota, namely: Beginning at the intersection of the one hundred and third meridian of longitude with the northern boundry of the State of Nebraska; thence north along said meridian to the South Fork of Cheyenne River, and down said stream to the mouth of Battle Creek; thence due east to White River; thence down White River to the mouth of Black Pipe Creek on White River; thence due south to said north line of the State of Nebraska; thence west on said north line to the place of beginning. Also, the following tract of land situate in the State of Nebraska, namely: Beginning at a point on the boundary-line between the State of Nebraska and the Territory of Dakota where the range line between ranges forty-four and forty-five west of the sixth principal meridian, in the Territory of Dakota, intersects said boundary-line; thence east along said boundary-line five miles; thence due south five miles; thence due west ten miles; thence due north to said boundary-line; thence due east along said boundary-line to the place of beginning: *Provided*, That the said tract of land in the State of Nebraska shall be reserved, by Executive order; only so long as it may be needed for the use and protection of the Indians receiving rations and annuities at the Pine Ridge Agency.

Sec. 2. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Rosebud Agency, in said Territory of Dakota, namely: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of

west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel to a point due south from the mouth of Black Pipe Creek; thence due north to the mouth of Black Pike Creek; thence down White River to a point intersecting the west line of Gregory County extended north; thence south on said extended west line of Gregory County to the intersection of the south line of Brule County extended west; thence due east on said south line of Brule County extended to the point of beginning in the Missouri River, including entirely within said reservation all islands, if any, in said river.

Sec. 3. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Standing Rock Agency, in the said Territory of Dakota, namely: Beginning at a point in the center of the main channel of the Missouri River, opposite the mouth of Cannon Ball River; thence down said center of the main channel to a point ten miles north of the mouth of the Moreau River, including also within said reservation all island, if any, in said river; thence due west to the one hundred and second degree of west longitude from Greenwich; thence north along said meridian to its intersection with the South Branch of Cannon Ball River, also known as Cedar Creek; thence down the main Cannon Ball River, and down said main Cannon Ball river to the center of the main channel of the Missouri River at the place of beginning.

Sec. 4. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Cheyenne River Agency, in the said Territory of Dakota, namely: Beginning at a point in the center of the main channel of the Missouri River, ten miles north of the mouth of the Moreau River, said point being the southeastern cor-

ner of the Standing Rock Reservation; thence down said center of the main channel of the Missouri River, including also entirely within said reservation all islands, if any, in said river, to a point opposite the mouth of the Cheyenne River; thence west to said Cheyenne River, and up the same to its intersection with the one hundred and second meridian of longitude; thence north along said meridian to its intersection with a line due west from a point in the Missouri River ten miles north of the mouth of the Moreau River; thence due east to the place of beginning.

Sec. 5. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Lower Brule Agency, in said Territory of Dakota, namely: Beginning on the Missouri River at Old Fort George; thence running due west to the western boundary of Presho County; thence running south on said western boundary to the forty-fourth degree of latitude; thence on said forty-fourth degree of latitude to western boundary of township number seventy-two; thence south on said township western line to an intersecting line running due west from Fort Lookout; thence eastwardly on said line to the center of the main channel of the Missouri River at Fort Lookout; thence north in the center of the main channel of the said river to the original starting point.

Sec. 6. That the following tract of land, being a part of the Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Crow Creek Agency, in said Territory of Dakota, namely: The whole of township one hundred and six, range seventy; township one hundred and seven, range seventy-one; township one hundred and eight, range seventy-one; township one hundred and eight, range seventy-two; township one hundred and nine, range seventy-two, and the

south half of township one hundred and nine, range seventy-one, and all except sections one, two, three, four, nine, ten, eleven, and twelve of township one hundred and seven, range seventy, and such parts as lie on the east or left bank of the Missouri River, of the following townships, namely: Township one hundred and six, and to seventy-one; township one hundred and seven, range seventy-two; township one hundred and eight, range seventy-three; township one hundred and eight, range seventy-four; township one hundred and eight, range seventy-five; township one hundred and eight, range seventy-six; township one hundred and nine, range seventy-three; township one hundred and nine, range seventy-four; south half of township one hundred and nine, range seventy-five, and township one hundred and seven, range seventy-three; also the west half of township one hundred and six, range sixty-nine, and sections sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, and thirty-three of township one hundred and seven, range sixty-nine.

Sec. 7. That each member of the Santee Sioux tribe of Indians now occupying a reservation in the State of Nebraska not having already taken allotments shall be entitled to allotments upon said reserve in Nebraska as follows: To each head of a family, one-quarter of a section; to each single person over eighteen years of age, one-eighth of a section; to each orphan child under eighteen years, one-eighth of a section; to each other person under eighteen years of age now living, one-sixteenth of a section; with title hereto, in accordance with the provisions of article six of the treaty concluded April twenty-ninth, eighteen hundred and sixty-eight, and the agreement with said Santee Sioux approved February twenty-eighth, eighteen hundred and seventy-seven, and rights under the same in all other respects conforming to this act. And said Santee Sioux shall be entitled to all other benefits under this act in the same manner and

with the same conditions as if they were residents upon said Sioux Reservation, receiving rations at one of the agencies herein named: *Provided*, That all allotments heretofore made to said Santee Sioux in Nebraska are hereby ratified and confirmed; and each member of the Flandreau band of Sioux Indians is hereby authorized to take allotments on the Great Sioux Reservation, or in lieu thereof shall be paid at the rate of one dollar per acre for the land to which they would be entitled, to be paid out of the proceeds of lands relinquished under this act, which shall be used under the direction of the Secretary of the Interior; and said Flandreau band of Sioux Indians is in all other respects entitled to the benefits of this act the same as if receiving rations and annuities at any of the agencies aforesaid.

Sec. 8. That the President is hereby authorized and required whenever in his opinion any reservation of such Indians, or any part thereof, is advantageous for agricultural or grazing purposes, and the progress in civilization of the Indians receiving rations on either or any of said reservations shall be such as to encourage the belief that an allotment in severalty to such Indians, or any of them, would be for the best interest of said Indians, to cause said reservation, or so much thereof as is necessary, to be surveyed, or re-surveyed, and to allot the lands in said reservation in severalty to the Indians located thereon as aforesaid, in quantities as follows: To each head of a family, three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a section; and to each other person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-eighth of a section. In case there is not sufficient land in either of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reser-

vations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *Provided*, That where the lands on any reservation are mainly valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual; or in case any two or more Indians who may be entitled to allotments shall so agree, the President may assign the grazing lands to which they may be entitled to them in one tract, and to be held and used in common.

Sec. 9. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to an allotment shall fail to make a selection within five years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner: *Provided*, That these sections as to the allotments shall not be compulsory without the consent of the majority of the adult members of the tribe, except that the allotments shall be made as provided for the orphans.

Sec. 10. That the allotments provided for in this act shall be made by special agents appointed by the President for

such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

Sec. 11. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottee, which patents shall be of the legal effect, and declare that the United States does and will hold the lands thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made or in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever, and patents shall issue accordingly. And each and every allottee under this act shall be entitled to all the rights and privileges and be subject to all the provisions of section six of the act approved February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians and for other purposes." *Provided*, That the President of the United States may in any case, in his discretion, extend the period by a term not exceeding ten years; and if any lease or conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such lease or conveyance or contract shall be ab-

solutely null and void: *Provided further*, That the law of descent and partition in force in the State or Territory where the lands may be situated shall apply thereto after patents therefor have been executed and delivered. Each of the patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto.

Sec. 12. That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which said reservation is held of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress: *Provided, however*, That all lands adapted to agriculture, with or without irrigation, so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers, and shall be disposed of by the United States to actual and bona-fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the

United States for the sole use of the tribe or tribes of Indians to whom such reservation belonged; and the same, with interest thereon at five per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians, or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward, delivered, free of charge, to the allottee entitled thereto.

Sec. 13. That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said Great Reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he has been notified of his said right of option in such manner as the Secretary of the Interior shall direct by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said separate reservations upon the land where such Indian may then reside, such allotment in all other respects to conform to the allotments hereinbefore provided. Each member of the Ponca tribe of Indians now occupying a part of the old Ponca Reservation, within the limits of the said Great Sioux Reservation, shall be entitled to allotments upon said old Ponca Reservation as follows: To each head of a family, three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a section; and to each other person under eighteen years of age now living, one-eighth of a section, with title thereto and rights under the same in all other respects conforming to this act. And said Poncas shall be entitled to all other benefits under this act in the same manner and with the same conditions as if they were a part of the Sioux Nation receiving rations at one of the agencies herein named. When allotments to the

Ponca tribe of Indians and to such other Indians as allotments are provided for by this act shall have been made upon that portion of said reservation which is described in the act entitled "An act to extend the northern boundary of the State of Nebraska," approved March twenty-eighth, eighteen hundred and eighty-two, the President shall, in pursuance of said act, declare that the Indian title is extinguished to all lands described in said act not so allotted hereunder, and thereupon all of said land not so allotted and included in said act of March twenty-eighth, eighteen hundred and eighty-two, shall be open to settlement as provided in this act: *Provided*, That the allotments to Ponca and other Indians authorized by this act to be made upon the land described in the said act entitled "An act to extend the northern boundary of the State of Nebraska," shall be made within six months from the time this act shall take effect.

Sec. 14. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation created by this act available for agricultural purposes, the Secretary of the Interior be, and he is hereby authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such Indian reservation created by this act; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

Sec. 15. That if any Indian has, under and in conformity with the provisions of the treaty with the Great Sioux Nation concluded April twenty-ninth, eighteen hundred and sixty-eight, and proclaimed by the President February twenty-fourth, eighteen hundred and sixty-nine, or any existing law, taken allotments of land within or without the limits of any of the separate reservations established by this act, such allotments are hereby ratified and made valid, and

such Indian is entitled to a patent therefor in conformity with the provisions of said treaty and existing law and of the provisions of this act in relation to patents for individual allotments.

Sec. 16. That the acceptance of this act by the Indians in manner and form as required by the said treaty concluded between the different bands of the Sioux Nation of Indians and the United States, April twenty-ninth, eighteen hundred and sixty-eight, and proclaimed by the President February twenty fourth, eighteen hundred and sixty-nine, as hereinafter provided, shall be taken and held to be a release of all title on the part of the Indians receiving rations and annuities on each of the said separate reservations, to the lands described in each of the other separate reservations so created, and shall be held to confirm in the Indians entitled to receive rations at each of said separate reservations, respectively, to their separate and exclusive use and benefit, all the title and interest of every name and nature secured therein to the different bands of the Sioux Nation by said treaty of April twenty-ninth, eighteen hundred and sixty eight. This release shall not affect the title of any individual Indian to his separate allotment on land not included in any of said separate reservations provided for in this act, which title is hereby confirmed, nor any agreement heretofore made with the Chicago, Milwaukee and Saint Paul Railroad Company or the Dakota Central Railroad Company for a right of way through said reservation; and for any lands acquired by any such agreement to be used in connection therewith, except as hereinafter provided; but the Chicago, Milwaukee and Saint Paul Railway Company and the Dakota Central Railroad Company shall, respectively, have the right to take and use, prior to any white person, and to any corporation, the right of way provided for in said agreement, with not to exceed twenty acres of land in addition to the right of way, for stations for every ten miles of road; and said companies shall also, respectively, have the

right to take and use for right of way, side-track, depot and station privileges, machine-shop, freight-house, round house, and yard facilities, prior to any white person, and to any corporation or association, so much of the two separate sections of land embraced in said agreements; also, the former company so much of the one hundred and eighty-eight acres, and the latter company so much of the seventy five acres, on the east side of the Missouri River, likewise embraced in said agreements, as the Secretary of the Interior shall decide to have been agreed upon and paid for by said railroad, and to be reasonably necessary upon each side of said river for approaches to the bridge of each of said companies to be constructed across the river, for right of way, side-track, depot and station privileges, machine-shop, freight house, round-house, and yard facilities, and no more: *Provided*, That the said railway companies shall have made the payments according to the terms of said agreements for each mile of right of way and each acre of land for railway purposes, which said companies take and use under the provisions of this act, and shall satisfy the Secretary of the Interior to that effect: *Provided further*, That no part of the lands herein authorized to be taken shall be sold or conveyed except by way of sale of, or mortgage of the railway itself. Nor shall any of said lands be used directly or indirectly for town site purposes, it being the intention hereof that said lands shall be held for general railway uses and purposes only, including stock yards, warehouses, elevators, terminal and other facilities of and for said railways; but nothing herein contained shall be construed to prevent any such railroad company from building upon such lands houses for the accommodation or residence of their employees, or leasing grounds contiguous to its tracks for warehouse or elevator purposes connected with said railways: *And provided further*, That said payments shall be made and said conditions performed within six month after this act shall take effect: *And provided further*, That said railway companies and each of them shall, within nine

months after this act takes effect, definitely locate their respective lines of road, including all station grounds and terminals across and upon the lands of said reservation designated in said agreements, and shall also, within the said period of nine months, file with the Secretary of the Interior a map of such definite location, specifying clearly the line of road the several station grounds and the amount of land required for railway purposes, as herein specified, of the said separate sections of land and said tracts of one hundred and eighty-eight acres and seventy-five acres, and the Secretary of the Interior shall, within three months after the filing of such map, designate the particular portions of said sections and of said tracts of land which the said railway companies respectively may take and hold under the provisions of this act for railway purposes. And the said railway companies, and each of them, shall, within three years after this act takes effect, construct, complete, and put in operation their said lines of road; and in case the said lines of road are not definitely located and maps of location filed within the periods hereinbefore provided, or in case the said lines of road are not constructed, completed, and put in operation within the time herein provided, then, and in either case, the lands granted for right of way, station grounds, or other railway purposes, as in this act provided, shall, without any further act or ceremony, be declared by proclamation of the President forfeited, and shall, without entry or further action on the part of the United States, revert to the United States and be subject to entry under the other provisions of this act; and whenever such forfeiture occurs the Secretary of the Interior shall ascertain the fact and give due notice thereof to the local land officers, and thereupon the lands so forfeited shall be open to homestead entry under the provisions of this act.

Sec. 17. That it is hereby enacted that the seventh article of the said treaty of April twenty-ninth, eighteen hundred

and sixty-eight, securing to said Indians the benefits of education, subject to such modifications as Congress shall deem most effective to secure to said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the time this act shall take effect; and the Secretary of the Interior is hereby authorized and directed to purchase, from time to time, for the use of said Indians, such and so many American breeding cows of good quality, not exceeding twenty-five thousand in number, and bulls of like quality, not exceeding one thousand in number, as in his judgment can be under regulations furnished by him, cared for and preserved, with their increase, by said Indians: *Provided*, That each head of family or single person over the age of eighteen years, who shall have or may hereafter take his or her allotment of land in severalty, shall be provided with two milch cows, one pair of oxens, with yoke and chain, or two mares and one set of harness in lieu of said oxen, yoke and chain, as the Secretary of the Interior may deem advisable, and they shall also receive one plow, one wagon, one harrow, one hoe, one axe, and one pitchfork, all suitable to the work they may have to do, and also fifty dollars in cash; to be expended under the direction of the Secretary of the Interior in aiding such Indians to erect a house and other buildings suitable for residence or the improvement of his allotment; no sales, barter or bargains shall be made by any person other than said Indians with each other, of any of the personal property hereinbefore provided for, and any violation of this provision shall be deemed a misdemeanor and punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year or both in the discretion of the court; That for two years the necessary seeds shall be provided to plant five acres of ground into different crops, if so much can be used, and provided that in the purchase of such seed preference shall be given to Indians who may have raised the same for sale, and so much money as shall be necessary for this purpose is hereby appropriated out of any money in the Treasury not

otherwise appropriated; and in addition thereto there shall be set apart, out of any money in the Treasury not otherwise appropriated, the sum of three millions of dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall so receive rations and annuities at the time this act takes effect, as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half thereof in such manner and for such purposes, including reasonable cash payments per capita as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support; and the Santee Sioux, the Flandreau Sioux, and the Ponca Indians shall be included in the benefits of said permanent fund, as provided in sections seven and thirteen of this act: *Provided*, That after the Government has been reimbursed for the money expended for said Indians under the provisions of this act, the Secretary of the Interior may, in his discretion, expend, in addition to the interest of the permanent fund, not to exceed ten per centum per annum of the principal of said fund in the employment of farmers and in the purchase of agricultural implements, teams, seeds, including reasonable cash payments per capita, and other articles necessary to assist them in agricultural pursuits, and he shall report to Congress in detail each year his doings hereunder. And at the end of fifty years from the passage of this act, said fund shall be expended for the purpose of promoting education, civilization, and self-support among said Indians, or otherwise distributed among them as Congress shall from time to time thereafter determine.

Sec. 18. That if any land in said Great Sioux Reservation is now occupied and used by any religious society for the purpose of missionary or educational work among said Indians, whether situate outside of or within the lines of any reservation constituted by this act, or if any such land is so occupied upon the Santee Sioux Reservation, in Nebraska, the exclusive occupation and use of said land, not exceeding one hundred and sixty acres in any one tract, is hereby, with the approval of the Secretary of the Interior, granted to any such society so long as the same shall be occupied and used by such society for educational and missionary work among said Indians; and the Secretary of the Interior is hereby authorized and directed to give to such religious society patent of such tract of land to the legal effect aforesaid; and for the purpose of such educational or missionary work any such society may purchase, upon any of the reservations herein created, any land not exceeding in any one tract one hundred and sixty acres, not interfering with the title in severalty of any Indian, and with the approval of and upon such terms, not exceeding one dollar and twenty-five cents an acre, as shall be prescribed by the Secretary of the Interior. And the Santee Normal Training School may, in like manner, purchase for such educational or missionary work on the Santee Reservation, in addition to the foregoing, in such location and quantity, not exceeding three hundred and twenty acres, as shall be approved by the Secretary of the Interior.

Sec. 19. That all the provisions of the said treaty with the different bands of the Sioux Nation of Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, and the agreement with the same approved February twenty-eight, eighteen hundred and seventy-seven, not in conflict with the provisions and requirements of this act, are hereby continued in force according to their tenor and limitation, anything in this act to the contrary notwithstanding.

Sec. 20. That the Secretary of the Interior shall cause to be erected not less than thirty school-houses, and more, if found necessary, on the different reservations, at such points as he shall think for the best interests of the Indians, but at such distance only as will enable as many as possible attending schools to return home nights, as white children do attending district schools: *And provided*, That any white children residing in the neighborhood are entitled to attend the said school on such terms as the Secretary of the Interior shall prescribe.

Sec. 21. That all the lands in the Great Sioux Reservation outside of the separate reservations herein described are hereby restored to the public domain, except American Island, Farm Island, and Niobrara Island, and shall be disposed of by the United States to actual settlers only, under the provisions of the homestead law (except section two thousand three hundred and one thereof) and under the law relating to town-sites: *Provided*, That each settler, under and in accordance with the provisions of said homestead acts, shall pay to the United States, for the land so taken by him, in addition to the fees provided by law, the sum of one dollar and twenty-five cents per acre for all lands disposed of within the first three years after the taking effect of this act, and the sum of seventy-five cents per acre for all lands disposed of within the next two years following thereafter, and fifty cents per acre for the residue of the lands then undisposed of, and shall be entitled to a patent therefor according to said homestead laws, and after the full payment of said sums: but the rights of honorably discharged Union soldiers and sailors in the late civil war as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged, except as to said sums: *Provided*, That all lands herein opened to settlement under this act remaining undisposed of at the end of ten years from

the taking effect of this act shall be taken and accepted by the United States and paid for by said United States at fifty cents per acre, which amount shall be added to and credited to said Indians as part of their permanent fund, and said lands shall thereafter be part of the public domain of the United States, to be disposed of under the homestead laws of the United States, and the provisions of this act; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of final entry, shall be null and void: *Provided*, That there shall be reserved public highways four rods wide around every section of land allotted, or opened to settlement by this act, the section lines being the center of said highways; but no deduction shall be made in the amount to be paid for each quarter-section of land by reason of such reservation. But if the said highway shall be vacated by any competent authority the title to the respective strips shall inure to the then owner of the tract of which it formed a part by the original survey. *And provided further*, That nothing in this act contained shall be so construed as to affect the right of Congress or of the government of Dakota to establish public highways, or to grant to railroad companies the right of way through said lands, or to exclude the said lands, or any thereof, from the operation of the general laws of the United States now in force granting to railway companies the right of way and depot grounds over and upon the public lands, American Island, an island in the Missouri River, near Chamberlain, in the Territory of Dakota, and now a part of the Sioux Reservation, hereby donated to the said city of Chamberlain: *Provided further*, That said city of Chamberlain shall formally accept the same within one year from the passage of this act, upon the express condition that the same shall be preserved and used for all time entire as a public park, and for no other purpose, to which all persons shall have free access; and said city shall have authority to adopt all proper rules and regulations for the improvement and care of said park; and upon the failure of any of said

conditions the said island shall revert to the United States, to be disposed of by future legislation only. Farm Island, an island in the Missouri River near Pierre, in the Territory of Dakota, and now a part of the Sioux Reservation, is hereby donated to the said city of Pierre: *Provided further*, That said City of Pierre shall formally accept the same within one year from the passage of this act, upon the express condition that the same shall be preserved and used for all time entire as a public park, and for no other purpose, to which all persons shall have free access; and said city shall have authority to adopt all proper rules and regulations for the improvement and care of said park; and upon the failure of any of said conditions the said island shall revert to the United States, to be disposed of by future legislation only. Niobrara Island, an island in the Niobrara River, near Niobrara, and now a part of the Sioux Reservation, is hereby donated to the said city of Niobrara: *Provided further*, That the said city of Niobrara, shall formally accept the same within one year from the passage of this act, upon the express condition that the same shall be preserved and used for all time entire as a public park, and for no other purpose, to which all persons shall have free access; and said city shall have authority to adopt all proper rules and regulations for the improvement and care of said park; and upon the failure of any of said conditions the said island shall revert to the United States, to be disposed of by future legislation only; *And provided further*, That if any full or mixed blood Indian of the Sioux Nation shall have located upon Farm Island, American Island, or Niobrara Island before the date of the passage of this act, it shall be the duty of the Secretary of the Interior, within three months from the time this act shall have taken effect, to cause all improvements made by any such Indian so located upon either of said islands, and all damage that may accrue to him by a removal therefrom, to be appraised, and upon the payment of the sum so determined, within six months after notice thereof by the city to which the island is herein donated to such Indian, said In-

dian shall be required to remove from said island, and shall be entitled to select instead of such location his allotment according to the provisions of this act upon any of the reservations herein established, or upon any land opened to settlement by this act not already located upon.

Sec. 22. That all money accruing from the disposal of lands in conformity with this act shall be paid into the Treasury of the United States and be applied solely as follows: First, to the reimbursement of the United States for all necessary actual expenditures contemplated and provided for under the provisions of this act, and the creation of the permanent fund hereinbefore provided; and after such reimbursement to the increase of said permanent fund for the purposes hereinbefore provided.

Sec. 23. That all persons who, between the twenty-seventh day of February, eighteen hundred and eighty-five, and the seventeenth day of April, eighteen hundred and eighty-five, in good faith, entered upon or made settlements with intent to enter the same under the homestead or pre-emption laws of the United States upon any part of the Great Sioux Reservation lying east of the Missouri River, and known as the Crow Creek and Winnebago Reservation, which, by the President's proclamation of date February twenty-seventh, eighteen hundred and eighty-five, was declared to be open to settlement, and not included in the new reservation established by section six of this act, and who, being otherwise legally entitled to make such entries, located or attempted to locate thereon homestead, pre-emption, or town site claims, by actual settlement and improvement of any portion of such lands, shall, for a period of ninety days after the proclamation of the President required to be made by this act, have a right to re-enter upon said claims and procure title thereto under the homestead or pre-emption laws of the United States, and complete the same as required therein, and their said claims shall, for such

time, have a preference over late entries; and when they shall have in other respects shown themselves entitled and shall have complied with the law regulating such entries, and, as to homesteads, with the special provisions of this act, they shall be entitled to save said lands, and patents therefor shall be issued as in like cases: *Provided*, That pre-emption claimants shall reside on their lands the same length of time before procuring title as homestead claimants under this act. The price to be paid for town-site entries shall be such as is required by law in other cases, and shall be paid into the general fund provided for by this act.

Sec. 24. That sections sixteen and thirty-six of each township of the lands open to settlement under the provisions of this act, whether surveyed or unsurveyed, are hereby reserved for the use and benefit of the public schools, as provided by the act organizing the Territory of Dakota; and whether surveyed or unsurveyed said sections shall not be subject to claim, settlement, or entry under the provision of this act or any of the land laws of the United States: *Provided, however*, That the United States shall pay to said Indians, out of any moneys in the Treasury not otherwise appropriated, the sum of one dollar and twenty-five cents per acre for all lands reserved under the provisions of this section.

Sec. 25. That there is hereby appropriated the sum of one hundred thousand dollars, out of any money in the Treasury not otherwise appropriated, or so much thereof as may be necessary, to be applied and used towards surveying the lands herein described as being opened for settlement, said sum to be immediately available; which sum shall not be deducted from the proceeds of lands disposed of under this act.

Sec. 26. That all expenses for the surveying, platting, and disposal of the lands opened to settlement under this act

shall be borne by the United States, and not deducted from the proceeds of said lands.

Sec. 27. That the sum of twenty-eight thousand two hundred dollars, or so much thereof as may be necessary, be, and hereby is, appropriated out of any money in the Treasury not otherwise appropriated, to enable the Secretary of the Interior to pay to such individual Indians of the Red Cloud and Red Leaf bands of Sioux as he shall ascertain to have been deprived by the authority of the United States of ponies in the year eighteen hundred and seventy-six, at the rate of forty dollars for each pony; and he is hereby authorized to employ such agent or agents as he may deem necessary in ascertaining such facts as will enable him to carry out this provision, and to pay them therefor such sums as shall be deemed by him fair and just compensation: *Provided*, That the sum paid to each individual Indian under this provision shall be taken and accepted by such Indian in full compensation for all loss sustained by such Indian in consequence of the taking from him of ponies as aforesaid: *And provided further*, That if any Indian entitled to such compensation shall have deceased, the sum to which such Indian would be entitled shall be paid to his heirs-in-law, according to the laws of the Territory of Dakota.

Sec. 28. That this act shall take effect, only, upon the acceptance thereof and consent thereto by the different bands of the Sioux Nation of Indians, in manner and form prescribed by the twelfth article of the treaty between the United States and said Sioux Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, which said acceptance and consent, shall be made known by proclamation by the President of the United States, upon satisfactory proof presented to him, that the same has been obtained in the manner and form required, by said twelfth article of said treaty; which proof shall be presented to him within one year from the passage of this act; and upon failure of such

proof and proclamation this act becomes of no effect and null and void.

Sec. 29. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty five thousand dollars, or so much thereof as may be necessary which sum shall be expended, under the direction of the Secretary of the Interior, for procuring the assent of the Sioux Indians to this act provided in section twenty-seven.

Sec. 30. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved, March 2, 1889.

[#58A]

Proclamation of February 10, 1890, 26 Stat. 1554

PROCLAMATIONS. No. 9.

[No. 9]

By the President of the United States of America.

A PROCLAMATION

Whereas, it is provided in the Act of Congress, approved March second, eighteen hundred and eighty-nine, entitled "An Act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations and to secure the relinquishment of the Indian title to the remainder, and for other purposes," "that this act shall take effect, only, upon the acceptance thereof and consent thereto by the different bands of the Sioux Nation of Indians, in manner and form prescribed by the twelfth article of the treaty between the United States and said Sioux Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, which said acceptance and consent shall be made known by proclamation by the President of the United States, upon a satisfactory proof presented to him, that the

same has been obtained in the manner and form required, by said twelfth article of said treaty; which proof shall be presented to him within one year from the passage of this act; and upon failure of such proof and proclamation this act becomes of no effect and null and void," and

Whereas satisfactory proof has been presented to me that the acceptance of and consent to the provisions of the said act by the different bands of the Sioux Nation of Indians have been obtained in manner and form as therein required;

Now, therefore, I, Benjamin Harrison, President of the United States, by virtue of the power in me vested, do hereby make known and proclaim the acceptance of said act by the different bands of the Sioux Nation of Indians, and the consent thereto by them as required by the act, and said act is hereby declared to be in full force and effect, subject to all the provisions, conditions, limitations and restrictions, therein contained.

All persons will take notice of the provisions of said act, and of the conditions, limitations and restrictions therein contained, and be governed accordingly.

I furthermore notify all persons to particularly observe that by said act certain tracts or portions of the Great Reservation of the Sioux Nation in the Territory of Dakota, as described by metes and bounds are set apart as separate and permanent reservations for the Indians receiving rations and annuities at the respective agencies therein named;

That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said Great Reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he has been notified of his said right of option in such manner as the Secretary of the Interior shall direct by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said

separate reservations upon the land where such Indian may then reside.

That each member of the Ponca tribe of Indians now occupying a part of the old Ponca Reservation, within the limits of the said Great Sioux Reservation, shall be entitled to allotments upon said old Ponca Reservation, in quantities as therein set forth, and that when allotments to the Ponca tribe of Indians, and to such other Indians as allotments are provided for by this act, shall have been made upon that portion of said reservation which is described in the act entitled "an act to extend the northern boundary of the State of Nebraska," approved March twenty-eighth, eighteen hundred and eighty-two, the President shall, in pursuance of said act, declare that the Indian title is extinguished to all lands described in said act not so allotted hereunder, and thereupon all of said land not so allotted and included in said act of March twenty-eighth, eighteen hundred and eighty-two, shall be open to settlement as provided in this act;

That protection is guaranteed to such Indians as may have taken allotments either within or without the said separate reservations under the provisions of the treaty with the Great Sioux Nation, concluded April twenty-ninth, eighteen hundred and sixty-eight; and that provision is made in said act for the release of all title on the part of said Indians receiving rations and annuities on each separate reservation, to the lands described in each of the other separate reservations, and to confirm in the Indians entitled to receive rations at each of said separate reservations, respectively, to their separate and exclusive use and benefit, all the title and interest of every name and nature secured to the different bands of the Sioux Nation by said treaty of April twenty-ninth, eighteen hundred and sixty-eight; and that said release shall not affect the title of any individual Indian to his separate allotment of land not included in any of said separate reservations, nor any agreement heretofore

made with the Chicago, Milwaukee and Saint Paul Railroad Company or the Dakota Central Railroad Company respecting certain lands for right of way, station grounds, etc., regarding which certain prior rights and privileges are reserved to and for the use of said railroad companies, respectively, upon the terms and conditions set forth in said act:

That it is therein provided that if any land in said Great Sioux Reservation is occupied and used by any religious society at the date of said act for the purpose of missionary or educational work among the Indians, whether situate outside of or within the limits of any of the separate reservations, the same, not exceeding one hundred and sixty acres in any one tract, shall be granted to said society for the purposes and upon the terms and conditions therein named, and

Subject to all the conditions and limitations in said act contained, it is therein provided that all the lands in the Great Sioux Reservation outside of the separate reservations described in said act, except American Island, Farm Island, and Niobrara Island, regarding which Islands special provisions are therein made, and sections sixteen and thirty-six in each township thereof (which are reserved for school purposes) shall be disposed of by the United States, upon the terms at the price and in the manner therein set forth, to actual settlers only, under the provisions of the homestead law (except section two thousand three hundred and one thereof) and under the law relating to town-sites.

That section twenty-three of said act provides "that all persons who, between the twenty-seventh day of February, eighteen hundred and eighty-five, and the seventeenth day of April, eighteen hundred and eighty-five, in good faith, entered upon or made settlements with intent to enter the same under the homestead or pre-emption laws of the United States upon any part of the Great Sioux Reservation

lying east of the Missouri River, and known as the Crow Creek and Winnebago Reservation, which, by the President's proclamation of date February twenty-seventh, eighteen hundred and eighty-five, was declared to be open to settlement, and not included in the new reservation established by section six of this act, and who, being otherwise legally entitled to make such entries, located or attempted to locate thereon homestead, pre-emption, or town-site claims by actual settlement and improvement of any portion of such lands, shall, for a period of ninety days after the proclamation of the President required to be made by this act, have a right to re-enter upon said claims and procure title thereto under the homestead or pre-emption laws of the United States, and complete the same as required therein, and their said claims shall, for such time, have a preference over later entries; and when they shall have in other respects shown themselves entitled and shall have complied with the law regulating such entries, and, as to homesteads, with the special provisions of this act, they shall be entitled to have said lands, and patents therefor shall be issued as in like cases: *Provided*, That pre-emption claimants shall reside on their lands the same length of time before procuring title as homestead claimants under this act. The price to be paid for town-site entries shall be such as is required by law in other cases, and shall be paid into the general fund provided for by this act."

It is, furthermore, hereby made known that there has been and is hereby reserved from entry or settlement that tract of land now occupied by the agency and school buildings at the Lower Brule Agency, to-wit:

The west half of the southwest quarter of section twenty-four; the east half of the southeast quarter of section twenty-three; the west half of the northwest quarter of section twenty-five; the east half of the northeast quarter of section twenty-six, and the northwest fractional quarter of the southeast quarter of section twenty-six; all in township one

hundred and four, north of range seventy-two, west of the fifth principal meridian:

That there is also reserved as aforesaid the following described tract within which the Cheyenne River Agency, school and certain other buildings are located, to wit: Commencing at a point in the center of the main channel of the Missouri River opposite Deep Creek, about three miles south of Cheyenne River; thence due west five and one half miles; thence due north to the Cheyenne River; thence down said river to the center of the main channel thereof to a point in the center of the Missouri River due east or opposite the mouth of said Cheyenne River; thence down the center of the main channel of the Missouri River to the place of beginning:

That in pursuance of the provisions contained in section one of said act, the tract of land situate in the State of Nebraska and described in said act as follows; to wit: "Beginning at a point on the boundary-line between the State of Nebraska and the Territory of Dakota, where the range line between ranges forty-four and forty-five west of the sixth principal meridian in the Territory of Dakota, intersects said boundary-line; thence east along said boundary-line five miles; thence due south five miles; thence due west ten miles; thence due north to said boundary-line; thence due east along said boundary-line to the place of beginning." same is continued in a state of reservation so long as it may be needed for the use and protection of the Indians receiving rations and annuities at the Pine Ridge Agency.

Warning is hereby also expressly given to all persons not to enter or make settlement upon any of the tracts of land specially reserved by the terms of said act, or by this proclamation, or any portion of any tracts of land to which any individual member of either of the bands of the great Sioux Nation, or the Ponca tribe of Indians, shall have a preference right under the provisions of said act; and

further, to in no wise interfere with the occupancy of any of said tracts by any of said Indians, or in any manner to disturb, molest or prevent the peaceful possession of said tracts by them.

The surveys required to be made of the lands to be restored to the public domain under the provisions of the said act, and as in this proclamation set forth will be commenced and executed as early as possible.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this tenth day of February in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fourteenth.

Benj. Harrison.

By the President:

James G. Blaine,

Secretary of State.

[#58B]

DAWES ACT

Chap. 119. — An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is authorized, whenever in his opinion any

reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes to cause said reservation, or any part thereof, to be surveyed or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further*, That when the lands allotted are only valuable for grazing purposes an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

Sec. 2. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the

improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to any allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which election shall be allotted as in cases where selections are made by the Indians and patents shall issue in like manner.

Sec. 3. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

Sec. 4. That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quan-

ties and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land-office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

Sec. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotments shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents

therefor have been executed and delivered, except as herien otherwise provided; and the laws of the State of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act: *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interest of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: *Provided however*, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of In-

dians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And hereafter in the employment of Indian police, or any other employes in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

Sec. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence

separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

Sec. 7. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by an riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

Sec. 8. That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order.

Sec. 9. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

Sec. 10. That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

Sec. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

Approved, February 8, 1887.

Chap. 383. — An act to amend and further extend the benefits of the act approved February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States over the Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of the act entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven, be, and the same is hereby, amended so as to read as follows:

"Sec. 1. That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an Act of Congress or Executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation, or any part thereof, of such Indians is

advantageous for agricultural or grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed, if necessary, and to allot to each Indian located thereon one-eighth of a section of land: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual in quantity as above provided the land in such reservation or reservations shall be allotted to each individual pro rata, as near as may be, according to legal subdivisions: *Provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty to certain classes in quantity in excess of that herein provided the President, in making allotments upon such reservation, shall allot the land to each individual Indian of said classes belonging thereon in quantity as specified in such treaty or act, and to other Indians belonging thereon in quantity as herein provided: *Provided further*, That where existing agreements or laws provide for allotments in accordance with the provisions of said act of February eighth, eighteen hundred and eighty-seven, or in quantities substantially as therein provided, allotments may be made in quantity as specified in this act, with the consent of the Indians, expressed in such manner as the President, in his discretion, may require: *And provided further*, That when the lands allotted, or any legal subdivision thereof, are only valuable for grazing purposes, such lands shall be allotted in double quantities.

Sec. 2. That where allotments have been made in whole or in part upon any reservation under the provisions of said act of February eighth, eighteen hundred and eighty-seven, and the quantity of land in such reservation is sufficient to give each member of the tribe eighty acres, such allotments shall be revised and equalized under the provisions of this act: *Provided*, That no allotment heretofore approved by the Secretary of the Interior shall be reduced in quantity.

Sec. 3. That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or other disability, any allottee under the provisions of said act, or any other act or treaty can not personally and with benefit to himself occupy or improve his allotment or any part thereof the same may be leased upon such terms, regulations and conditions as shall be prescribed by such Secretary, for a term not exceeding three years for farming or grazing, or ten years for mining purposes: *Provided*, That where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the Council speaking for such Indians, for a period not to exceed five years for grazing, or ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior.

Sec. 4. That where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children, in quantities and manner as provided in the foregoing section of this amending act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions provided in the act to which this is an amendment. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf

for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

Sec. 5. That for the purpose of determining the descent of land to the heirs of any deceased Indian under the provisions of the fifth section of said act, whenever any male and female Indian shall have co-habited together as husband and wife according to the custom and manner of Indian life the issue of such co-habitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child: *Provided*, That the provisions of this act shall not be held or construed as to apply to the lands commonly called and known as the "Cherokee Outlet": *And provided further*, That no allotment of lands shall be made or annuities of money paid to any of the Sac and Fox of the Missouri Indians who were not enrolled as members of said tribe on January first, eighteen hundred and ninety; but this shall not be held to impair or otherwise affect the rights and equities of any person whose claim to membership in said tribe is now pending and being investigated.

Approved, February 28, 1891.

[#59]

Department of Interior decision, 56 I.D. 330, (June 15, 1948).

RESTORATION TO TRIBAL OWNERSHIP OF CEDED COLORADO UTE INDIAN LANDS

Opinion. June 15, 1938

Kirgis, *Acting Solicitor*:

At the instance of the Commissioner of Indian Affairs you [the Secretary of the Interior] have requested the opinion of

this office on the authority of the Secretary of the Interior to restore to tribal ownership under section 3 of the Indian Reorganization Act (June 18, 1934, 48 Stat. 984), the remaining undisposed of lands in Colorado ceded by the Confederate Bands of Ute Indians under the act of June 15, 1880 (21 Stat. 199). In phrasing the question, the Indian Office has asked whether section 3 is applicable to these lands in Colorado, "not situated adjacent to the existing Southern Ute Reservation." While this phrasing appears to restrict the question, it is believed that the Indian Office intends to request that all angles concerning the applicability of section 3 of the Indian Reorganization Act be determined. It is my intent to determine the matter in a comprehensive manner in view of the fact that the land involved is unusually large in extent, consisting of approximately 4,000,000 acres, and in view of the complicated legal and practical problems involved.

Section 3 of the Indian Reorganization Act reads as follows:

Sec. 3. The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however*, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this act: *Provided further*, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation: * * *. (Further provisos deal only with Papago Reservation.)

This section lays down two prerequisites for the application of the section to "ceded Indian lands." First, the Secretary of the Interior must find that the restoration to

tribal ownership will be in the public interest. Secondly, the lands involved must be "remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public lands laws of the United States." The finding of public interest, while a requirement of law, involves the determination of administrative questions which need not be discussed in this opinion. It is sufficient to point out that a restoration is not a mandatory but a discretionary act to be weighed as a matter of public interest. The second prerequisite involves the determination whether, as a matter of law, the description of the lands subject to restoration applies to these ceded Colorado Ute lands. In making this determination the applicability of the various terms used in the description will be discussed.

I. The Colorado Ute Area as an "Indian Reservation"

Lands to be restored must be surplus lands "of any Indian reservation." Therefore a first question involves the history and background of the Colorado Ute lands as an Indian reservation. In the first 20 years following the treaty of Guadalupe Hidalgo with Mexico in 1848, the United States entered into negotiations with various of the Indian tribes occupying the area acquired from Mexico. Among the treaties made was one with the "Utahs" (December 30, 1849, 9 Stat. 984) for obtaining free passage through the "territory of the Utahs." In 1863 a treaty was made with the Tabeguache Band of Ute Indians (proclaimed December 14, 1864, 13 Stat. 673), by which the band relinquished its right and interest in all lands within the United States except a designated area. The treaty expressly declined to recognize any title or right of the band to the area ceded or reserved except that possessed by the Indians under the laws of Mexico. It has been claimed that the Indians had no title or interest under the laws of Mexico in the lands which they occupied and were not recognized by the United States as hav-

ing the right of occupancy conceded to other Indian tribes in the United States. However, whatever may have been the interest of the Ute Indians in the lands occupied by them in this period, the treaty of March 2, 1868 (16 Stat. 619), with various bands of Ute Indians, who have since been commonly known as the Confederated Bands of Ute Indians, established a reservation for these Indians having the same status as any other Indian reservation in the United States. This treaty set apart a defined territory, consisting of approximately 15,000,000 acres, for the "absolute use and occupation" of these Ute Indians. The status of this territory as a reservation has been uniformly recognized by the Congress, the Court of Claims (*The Ute Indians v. The United States*, 45 Ct. Cls. 440), and the Department. The definition of an Indian reservation by the Supreme Court in *Minnesota v. Hitchcock*, 185 U.S. 373, 389, 390, that an Indian reservation is created when from what has been done there results a certain defined tract appropriated to Indian purposes, clearly covers the reservation of the Utes established by the 1868 treaty. In 1874 (18 Stat. 36), this reservation was reduced by approximately 3½ million acres through a cession by the Indians in consideration of a specified perpetual annuity, and the Indians retained no further interest in the lands thus ceded.

The reservation of the Confederated Bands of Ute Indians, as diminished by the 1874 cession, was the subject of the 1880 act under which the Confederated Bands ceded the lands involved in this opinion. The specific provisions of the 1880 act, its purpose and legal effect will be set forth in some detail later in this opinion. The actual result of the 1880 act, however, was that the Confederated Bands were divided into three groups, the Uncompahgre and White River Utes being located in Utah and the Southern Utes remaining in the southern portion of the reservation. All of the remainder of the reservation has been sold, set apart as national forests, or otherwise disposed of, except the four million acres which are the subject of this opinion.

It might be claimed that in view of the above described results of the 1880 act, the reservation of the Confederated Bands was actually extinguished and that, therefore, the lands involved in this opinion are not surplus lands "of any Indian reservation." In my judgment, even if the reservation of the Confederated Bands of Utes were held no longer to exist, that fact alone would not negative the application of section 3 of the Indian Reorganization Act to the remaining undisposed of lands of that reservation. The phrase "of any Indian reservation" must be used in section 3 to describe the character and location of the lands at the time they were opened to disposal under the public land laws. The lands which may be restored to tribal ownership must be lands which were part of any Indian reservation, not of any forest or military reservation or of any other class of lands. Section 3 cannot mean that the lands must now have the character of Indian reservation lands, as they are not reservation lands but lands capable of being restored to reservation status under the Indian Reorganization Act. Nor can section 3 mean that the lands must be located within the geographical limits of an Indian reservation. In many instances of surplus land cessions entire portions of Indian reservations were cut off from the reservations and opened to disposal, while in other instances, by "similar legal instruments," areas located within the reservations were opened to disposal. Whether the lands opened to disposal were cut off from or out of existing Indian reservation is a matter of historical circumstance and not of legal significance. Moreover, nothing in section 3 requires the remaining undisposed of lands to lie in any particular geographic relation to an existing Indian reservation. Such a requirement would ignore the well-known facts that the location of such lands is purely fortuitous and that the lands, by their very nature, are scattered tracts.

II. Colorado Ute Lands Opened To Disposal Under the Public Land Laws

The surplus lands of the Colorado Ute Indian Reservation were opened to disposal in designated ways under the public land laws by section 3 of the act of June 15, 1880. The relevant parts of the section read as follows:

all the lands not so allotted, the title to which is, by the said agreement of the confederated bands of the Ute Indians, and this acceptance by the United States, released and conveyed to the United States, shall be held and deemed to be public lands of the United States and subject to disposal under the laws providing for disposal of public lands, at the same price and on the same terms as other lands of the character, except as provided in this act: *Provided*, That none of said lands, whether mineral or otherwise, shall be liable to entry and settlement under the provisions of the homestead law; but shall be subject to cash entry only in accordance with existing law * * *.

This act was supplemented by the act of July 28, 1882 (22 Stat. 178), which provided that that portion of the Ute Reservation lately occupied by the Uncompahgre and White River Utes shall be "subject to disposal from and after the passage of this act, in accordance with the provisions and under the restrictions and limitations of section 3 of the act of Congress approved June 15, 1880 * * *." These provisions clearly bring the remaining undisposed of lands involved in this opinion within so much of section 3 of the Indian Reorganization Act as refers to remaining lands of an Indian reservation "heretofore opened * * * to sale, or any other form of disposal * * * by any of the public land laws of the United States."

III. Ceded Colorado Ute Lands as "Surplus Lands"

The key question in connection with the application of section 3 to the remaining Colorado Ute lands, is, in my opinion, the question whether these lands come within the designation of "surplus lands" in section 3. The word "surplus" means that which remains over and above what is required. It might be argued that practically all lands ceded by Indians were surplus lands according to this definition since they were doubtless considered as not being required by the Indians. However, Congress could not have intended that all remaining undisposed-of ceded lands should be available for restoration to tribal ownership, as such lands would embrace practically all of the remaining public domain. The "Interior Department" has taken the position that section 3 is not intended to cover all ceded lands but those ceded lands in which the Indians have retained an interest by reason of the fact that the lands were ceded to the United States to be disposed of by the United States in specified ways, the proceeds of the sale to be held for the benefit of the Indians. This type of ceded land "was evidently in the mind" of Congress at the time of the passage of the Reorganization Act. The debates on the bill in the Senate show that section 3 was discussed as a provision making possible the restoration of the use of the lands to the Indians in place of the proceeds to which they were entitled from any sale (Congressional Record, 73d Congress, 2d session, page 11135.)

The reference to surplus lands in section 3 of the Reorganization Act refers, however, primarily to surplus lands remaining after the actual or contemplated allotment of the Indians, such surplus lands having been ceded to be disposed of for the benefit of the Indians. The term "surplus lands" has been used commonly in connection with the allotment system and allotted reservations to refer to the lands not allotted or set aside for allotment and not reserved

for administrative or tribal purposes. In the consideration of section 3 in Congress, the term "surplus lands" was defined in this manner. (Senate Report of the Committee on Indian Affairs on S. 3645, No. 1080, 73d Congress, 2d session; Congressional Record 73d Congress, 2d session, page 11136.) The policy of the general allotment act and the allotment acts for specific reservations was to settle the individual Indians as farmers on individual tracts of land and to open the remainder of the reservation to disposal to white people. The purpose was different from that involved in previous disposals of Indian land since it was aimed at settling permanently and civilizing the individual Indians and at the same time opening their existing reservation to the advancing white settlers. The difference in purpose and effect between the conditional surplus land cession involved in the allotment acts and the previous type of cession in which the Indians were removed to another reservation to be held in common in the same manner as their previous reservation in which they then lost all interest is analyzed by the Supreme Court in the case of *Minnesota v. Hitchcock*, *supra*.

The 1880 cession agreement with the Colorado Ute Indians is one of the early examples of conditional surplus land cessions; in fact the provisions of the 1880 act set forth a plan of allotment and disposal of surplus lands which became stereotyped in later allotment acts. A commission was appointed to make a census of the Indians, to select lands to be allotted, to survey sufficient of these lands for allotment, and to cause allotments to be made. The provisions of section 3 of this act, quoted above, are significant in that they provide for the disposal only of those lands within the reservation "not so allotted." The legislative history of this 1880 act makes clear that the chief purpose of the act was the immediate allotment within the Colorado Ute Reservation of the individual Indians of various Ute bands and the opening to disposal of the remaining surplus lands. The opening up of the surplus lands was described as

essential in view of the thousands of settlers and prospectors on the borders of the reservation who could not successfully be kept from entering the reservation by military or other means. The plan of allotment of the Indians was favored and bitterly opposed as the entering wedge in the allotment of the tribes generally throughout the United States. In fact, a general allotment act was pending in that session of Congress. (See House debates on the 1880 agreement, Congressional Record, 46th Congress, 2d session, June 7, 1880, pages 4251-4263.)

From the foregoing it definitely appears that the fact that the cession occurred several years before other allotment-cessions does not mean that this cession falls within the earlier type of outright cession and removal. This cession was rather a forerunner and a model of later allotment acts and differs in no important respect from these later acts. The fact that two of the three main groups of Indians were subsequently not allotted within the borders of the Colorado Ute Reservation does not alter my conclusion. The 1880 act did not provide for establishing new reservations but for supplying the Indians with allotments, and where allotments occurred outside the reservation, the Indians were to be charged a price of \$1.25 an acre to be paid from the proceeds of the land sold from the Colorado Ute Reservation. The allotments off the reservation were therefore in the nature of lieu allotments and, in the case of the Uncompahgre Utes, were made only because of the fact that insufficient agricultural lands were found within the Colorado Ute Reservation. (See Report of the Commissioner of Indian Affairs, 1881, at pages 19 and 325, *et. s. q.*)

There can be no doubt that the surplus lands remaining after allotment were to be sold for the benefit of the Ute Indians. The original agreement between the Government and the chiefs of the Confederated Bands of the Ute Indians which preceded the 1880 act contemplated an outright sale of the surplus lands remaining after allotment in considera-

tion of an annuity of \$50,000. In Congress it was pointed out that there would be realized in one year from one mine within the Colorado Ute Reservation nearly 20 times the entire principal sum from which these annuities to the Indians would be paid. The land was described as rich in minerals and of great value. As a result of the realization of the complete inadequacy of the annuity as a consideration for the relinquishment of the Indian right of occupancy in these lands, and in order that "full justice" might be done the Indians, the original agreement was amended by the 1880 act to provide that after the United States had been reimbursed the amount of the annuities paid the Indians and other expenses connected with the act, any further proceeds received from the sale of the land should be placed to the credit of the Indians. (Congressional Record, 46th Congress, 2d session, June 7, 1880, page 4261, June 12, 1880, page 4487.) The amended agreement as embodied in the 1880 act was subsequently accepted by the requisite number of Indians of the Confederated Bands.

The amended agreement was described by the Court of Claims in the case of *The Ute Indians v. The United States*, *supra*, page 464, as entitling the Ute Indians to receive all proceeds of the reservation after the reimbursement and as providing for a transaction which was of no benefit to the United States, except the indirect benefit of opening a desirable territory to civilization. In the Court of Claims case the Indians were awarded a judgment for the value of the lands within the reservation which had been set apart for public reservations and thereby been excluded from sale. The Interior Department has consistently recognized that the Indians are entitled to the proceeds from the disposal of these lands. (3 L.D. 296); (7 L.D. 191); (47 L.D. 460.) The jurisdictional act which authorized suit in the Court of Claims provided that upon the rendition of final judgment the principal fund from which the annuities of the Indians were obtained should be abolished and from that date no further

annuities should be paid. As a result, therefore, since the 1910 decision the interest of the United States in the proceeds of the sale to the extent of \$50,000 annually has not existed and the remaining undisposed of surplus lands within the reservation have been subject to disposal for the unencumbered benefit of the Indians.

IV. Effect of Declaration of Lands as "Public Lands"

From the foregoing it is my conclusion that the remaining undisposed of lands within the Colorado Ute Reservation are "surplus lands" within the meaning of section 3 of the Indian Reorganization Act. There remains only the question whether these lands must nevertheless be excluded from the scope of section 3 because of the fact that in the 1880 cession and in the subsequent act of 1882 it was provided that the lands not allotted "shall be held and deemed to be public lands of the United States." It has been urged that in the usual cession of surplus lands remaining after allotment no declaration that the lands ceded shall be public lands is made. As a consequence it is argued that these lands are not Indian lands in accordance with the holding in the case of *Ash Sheep Co. v. United States*, 252 U.S. 159. In that case the undisposed of ceded surplus lands of the Crow Reservation were held to be "Indian lands" within the meaning of a statute requiring the consent of the Indians to the use of the land for grazing purposes. The lands involved were ceded under the act of April 27, 1904 (33 Stat. 352), which provided that a designated portion of the reservation should be sold to the United States but that the United States should serve as trustee for the disposal of the lands for the benefit of the Indian.

In my opinion, the declaration in the 1880 act that the surplus ceded lands shall be public lands does not alter the fact that these lands are remaining surplus lands of an Indian reservation theretofore opened to disposal under the public land laws, within section 3 of the Indian Reorganiza-

tion Act, even if the declaration lessened the interest of the Indians in the lands ceded during the time they were held by the United States and before they were sold. However, it is also my opinion that this declaration did not make the 1880 cession different in legal effect from the Crow cession or other usual surplus land cessions where the Indians were to receive the proceeds of the sale. The significant legal effect of these cessions is that the United States becomes a trustee for the disposal of the land ceded. Regardless of the particular language of the cession, the result is that the Indians retain an equitable interest in the land until they have received the consideration bargained for, and the United States becomes a "trustee in possession." *Minnesota v. Hitchcock*, *supra*; *Ash Sheep Co. v. United States*, *supra*.

Surplus ceded lands to be disposed of for the Indians are frequently referred to in acts of Congress and departmental actions both as public lands and Indian lands. An example of the application by Congress of the term "public domain" to ceded surplus lands which would be "Indian lands" under the *Ash Sheep Co.* case, *supra*, occurs in the act of May 29, 1908 (35 Stat. 460), under which the Cheyenne River and Standing Rock Reservations in South Dakota were allotted. In this act it was provided that the Indians might use the timber upon the ceded surplus lands so long as these lands remained a part of the "public domain," and yet the act provided that the United States should act only as trustee for the Indians in the sale of the lands. In the act of Congress dismembering the Great Sioux Reservation, a provision that the unreserved lands shall be restored to the public domain is used in two places with obviously different meanings. In section 21 it is provided that the unreserved land shall be "restored to the public domain" to be disposed of to actual settlers only, the proceeds to go to the Indians. However, it is then provided that if the lands are not disposed of at the end of 10 years, they shall be paid for by the United States at a designated rate, and that the lands so purchased should

then become "a part of the public domain." The first provision restoring the lands to the public domain could have had no legal effect to alter the equitable interest of the Indians in the land until sold or purchased by the United States.

The evident purpose of designating lands ceded for disposal for Indian benefit as public lands or public domain is to indicate that the lands are subject to disposal under public land laws. Lands so designated by Congress would seem therefore to be peculiarly within rather than without the scope of section 3 of the Indian Reorganization Act which refers to lands subject to disposal under the public land laws.

Surplus lands ceded to be disposed of for the Indians are in fact qualified public lands and also qualified Indian lands. They are public lands in that the United States has the legal title and has secured from the Indians a release of their right of occupancy and has arranged to dispose of them, but they are not public lands in the full sense of the term as they are to be disposed of only in limited ways and upon certain conditions. *Minnesota v. Hitchcock, supra*. It should be noted that both the 1880 and 1882 acts concerning the Ute land qualified the reference to the land as public land and subject to disposal under the public land laws by stated conditions and restrictions.

Surplus lands are also properly designated as Indian lands in view of the interest of the Indians in the proceeds of any disposal of the lands. This equitable interest is the significant condition attached to the lands which distinguishes them from the public lands generally as Indian lands. Since this condition was attached to the lands ceded by the Confederated Bands of Utes, the undisposed of lands may be as appropriately termed Indian lands as the lands ceded by other Indian tribes to be disposed of for their benefit. Under the regulations of the Interior Department of July 25,

1912, for governing the use of vacant ceded land (Regulations of the General Land Office, 1930, page 669) it was contemplated that remaining surplus lands, the proceeds of the disposal of which were for the benefit of the Indians, would be cooperatively administered by the Indian Office and the General Land office, the Indian Office retaining jurisdiction of the use of the lands before they were sold and the General Land Office administering the final disposition of the lands. It is true that this administration by the Indian Office has not occurred in connection with these surplus Colorado Ute lands. The reason for that, however, is not the result of any legal difference but the result of practical considerations since the Indians were in fact allotted only in the southern part of the reservation, and since the surplus lands covered a vast area.

V. Summary of Conclusions

In view of the foregoing considerations, and in summary of my conclusions, it is my opinion that the undisposed of lands in Colorado ceded by the Confederated Bands of Ute Indians under the act of June 15, 1880, subject to the provisions and conditions set forth in that act, come within the designation in section 3 of the Indian Reorganization Act of remaining surplus lands of any Indian reservation open to disposal by the public land laws, and that they are, therefore, available for restoration to tribal ownership, provided the Secretary of the Interior finds the restoration to be in the public interest. It is immaterial as a matter of law whether the area to be restored is adjacent to the Southern Ute Reservation.

Approved: June 15, 1938.

Oscar L. Chapman,
Assistant Secretary.

[#60]

Patent of Gustav Gnirk, Dec. 5, 1910

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at Gregory, South Dakota, has been deposited in the General Land Office, whereby it appears that full payment has been made by the claimant Gustav Gnirk according to the provisions of the Act of Congress of April 24, 1820, entitled "An Act making further provision for the sale of the Public Lands," and the acts supplemental thereto, for the Northwest Quarter of Section Nine in Township Ninety-Seven North of Range Seventy West of the Fifth Principal Meridian, South Dakota, containing one hundred sixty acres, according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts.

IN TESTIMONY WHEREOF, I, WILLIAM H. TAFT, President of the United States of America, have caused

these letters to be made Patent, and the seal of the General Land office to be hereunto affixed.

Given under my hand, at the City of Washington, the Fifth day of December in the year of our Lord One Thousand Nine Hundred and Ten and of the Independence of the United States the One Hundred and Thirty-Fifth.

[SEAL]

By the President: William H. Taft

By W. P. LeRoy, Secretary

Recorder of the General Land Office

RECORDED: Patent Number 164123

Supreme Court, U. S.
FILED

JAN 7 1977

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF

MARVIN J. SONOSKY

2030 M Street, N.W.
Washington, D.C. 20036

Attorney for the Petitioner.

(i)

TABLE OF CONTENTS

Page

I. Respondents disregard the last section of each Rosebud statute	2
II. Allotments	3
III. School Lands	4
IV. General Allotment Act	6
V. Operative language	8
VI. Reserved land	9
VII. The United States did not guarantee payment for opened lands not sold	10
VIII. Subsequent legislation	11
IX. Some of Respondents unsubstantiated statements statements	12
CONCLUSION	13

TABLE OF CITATIONS

Cases:

<i>DeCoteau v. District County Court</i> , 420 U.S. 425 (1975)	1
<i>Dodge v. Nakai</i> , 298 F. Supp. 17 (D.C. Ariz. 1969)	3b
<i>Erlenbaugh v. United States</i> , 409 U.S. 239 (1972)	12
<i>Mattz v. Arnett</i> , 412 U.S. 481 (1973)	2, 8
<i>Minnesota v. Hitchcock</i> , 185 U.S. 373 (1902)	5, 6
<i>Morton v. Ruiz</i> , 415 U.S. 199 (1973)	3b
<i>Oliphant v. Suquamish Indian Tribe</i> , No. 76-5729, October Term, 1976	3b
<i>Seymour v. Superintendent</i> , 368 U.S. 351 (1962)	2
<i>Tooahnippan v. Hickel</i> , 397 U.S. 598 (1970)	12
<i>United States v. Kagama</i> , 118 U.S. 375 (1886)	13

Statutes:

Act of February 8, 1887, c. 119, 24 Stat. 388.	7
Act of March 2, 1889, c. 405, sec. 21, 25 Stat. 888.	8

(ii)

Statutes, continued:

Page

Act of August 15, 1894, c. 290, sec. 12, 28 Stat. 286	5
Act of March 3, 1901, c. 832, 31 Stat. 1058	6
Snyder Act (25 U.S.C. 13)	4b
<i>Miscellaneous:</i>	
<i>Federal Indian Law</i> , (GPO 1958)	3b
45 Cong. Rec. 5471 (1910)	10
S. Rept. No. 68, 61st Cong., 2d Sess. (1910)	10

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF

Prior to the decision below, Indian tribes knew where they stood with respect to the status of their reservations. This Court had laid down the controlling principles. When a tribe sold its land to the United States for an agreed consideration, Indian title was extinguished, the land was restored to the public domain and the reservation terminated, even in the exceptional case where the Indians continued to hold allotments in the ceded area. *DeCoteau v. District County Court*, 420 U.S. 425 (1975). But where a tribe did not sell and the United

States did not buy, the reservation status was unaffected, even though the unallotted and unreserved land was opened for sale to settlers at prices fixed by Congress and the proceeds credited to the tribe. *Mattz v. Arnett*, 412 U.S. 481 (1973); *Seymour v. Superintendent*, 368 U.S. 351 (1962).

The respondents would obliterate the distinctions made by this Court, wipe out the rule of *Mattz* and *Seymour*, make the rule of *DeCoteau* exclusive and thus destroy the reservation status of three-fourths of Rosebud and of all or portions of at least 20 other reservations. (Tribe's opening brief, App. 14a.)

In no instance has a reservation been terminated unless Indian title to the land was first extinguished by cession, or by eminent domain, or unless Congress disestablished the reservation by explicit language of termination. Concededly, the Rosebud statutes are not exercises of eminent domain, and do not contain language of termination. The dispute is whether the court below correctly held that the three Rosebud statutes constituted sales and purchases so that Indian title was extinguished, the land was restored to the public domain, and the reservation status of the opened areas was terminated.

I.

Respondents disregard the last section of each Rosebud statute.

In a prolix brief (142 pages) that violates the spirit of the Court's Rule 40, the respondents search practically everywhere but the Rosebud statutes themselves for legislative intent in support of the proposition that the Tribe ceded and the United States bought and extinguished Indian title. But in their search, the respondents

avoid mention of the critical statutory language that contains the complete answer. That language appears in the last section of each of the three Rosebud statutes where Congress affirmatively declared that the United States was not buying the land, or guaranteeing to find purchasers, or agreeing to do anything but open the lands for sale and pay over the proceeds "only as received". (Pet. Br. 41-44.)

The respondents make no answer to the last section of each of the three Rosebud statutes. The respondents, as did the courts below, deal with the three statutes as if the last section of each had been omitted. But those last sections may not be ignored. They speak louder than any materials extrinsic to the statutes. They spell out in unmistakably clear language that the Tribes never ceded, the United States never bought, there was no payment from the United States, Indian title was not extinguished, the land was not made part of the public domain, and therefore, *Seymour* and *Mattz*, not *DeCoteau*, control. No part of the Rosebud reservation was terminated.

II.

Allotments

The Rosebud 1907 Act directed that prior to opening the lands affected (Tripp County), the Secretary was to make lieu allotments anywhere within the reservation, including Tripp County, to those allotted Indians who wished to change allotments. In addition, the Secretary was to make new 160-acre allotments to each enrolled, unallotted child.¹ The legislative history establishes that

¹The language appears in the first proviso of section 2 of the 1907 Act set out in the appendix to the Tribe's opening brief, p. 7a, reading in pertinent part as follows:

"* * * :*Provided*, That prior to the said proclamation the Secretary of the Interior, in his discretion,

[footnote continued]

the lieu allotment provision related to about 80 allottees who were dissatisfied with their allotments (Pet. Br. 48-49, 81); that the new allotments were for about 600 or 700 children who never had been allotted (Pet. Br. 49, fn. 50); and that all the allotments, lieu and new, could be made anywhere on the reservation, including the Tripp county area opened by the 1907 Act (Pet. Br. 48-51). The courts below ignored the provisions for the 600 or 700 new allotments. But the provision for new and lieu allotments in the very areas opened, cannot be reconciled with the "clear" intent required to terminate reservation status. (Pet. Br. 51-52.)

The respondents answer by ignoring the statutory language that interferes with their desired result. The respondents quote and rely on only that portion of the allotment language relating to the 80 lieu allotments, and, as did the courts below, make no mention of the language calling for allotments for the 600 or 700 unallotted children. (Resp. Br. 84-85.)

III.

School lands

The South Dakota Enabling Act granted to South Dakota out of the public lands, school sections 16 and 36, in each township, or where those sections had been

may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot one hundred and sixty acres of land to each child of Indian parentage whose father or mother is or was, in case of death, a duly enrolled member of the Sioux Tribe of Indians belonging on the Rosebud Reservation * * *." (emphasis supplied)

The respondent omits the underscored language, as did the courts below. (See Pet. Br. 51-52; Resp. Br. 84.)

sold or disposed of, lands in lieu thereof. The grant expressly excluded land in Indian reservations, until Indian title was extinguished and the lands became part of the public domain. (Pet. Br. 56.)

Where the reservation lands were opened for sale with the proceeds credited to the tribe, the lands were not public lands and the general school land grant did not apply. *Minnesota v. Hitchcock*, 185 U.S. 373, 391-395 (1902), and cases cited in Pet. Br. 33-34.

In order to transfer the Rosebud school land to the State, the United States paid the Tribe \$2.50 per acre for the school lands and extinguished Indian title. (Pet. Br. App. p. 6a, sec. 4; p. 9a, sec. 6; p. 13a, sec. 8.) The United States thus acquired title to the school lands. (Pet. Br. 30, fn. 36.) This is made plain in the last section of each of the three Rosebud Acts reciting that the United States was not purchasing any land except the school lands. (See pp. 2-3, *supra*.)² The Congressional debates that respondents emphasize, were concerned with whether the Government should donate school lands purchased with public funds. The debates were not concerned with reservation boundaries or jurisdiction. The legislative decision that the school lands should be donated was accomplished by placing specific language of grant in the Rosebud statutes.³

²The respondents point to three statutes preceding the 1904 Rosebud Act that were advanced during the debates as precedents for granting the school lands to South Dakota. (Resp. Br. 83-84.) In one instance the land was expressly "restored to the public domain" (Sioux 1889 Act, sec. 21). In the other two, Indian title was extinguished by outright purchase and sale (Sisseton and Wahpeton 1889 Act—*DeCoteau*); (Yankton Act of August 15, 1894, c. 290, sec. 12, 28 Stat. 286, 314). In the case of Rosebud also, the United States acquired title to the Rosebud school sections.

³The specific language also assured the State of South Dakota that it would get first choice and its full grant by permitting the State to satisfy its school grant before the land was opened for sale.

The courts below reasoned that since the general grant applied only where Indian title had been extinguished, the presence of the grant in the Rosebud Acts proved that Indian title to all of the opened land was extinguished. (Pet. Br. 57.) The courts should have come to the opposite conclusion. If the United States had not acquired the school sections and placed an explicit grant in each of the three Rosebud statutes, the school lands would not have passed to the State. *Minnesota v. Hitchcock*, 185 U.S. 373, 391-395 (1902). If the United States had extinguished Indian title to all of the land, the separate acquisitions of the school sections and the explicit grants to the State would not have been necessary. In the last section of each of the Rosebud statutes, Congress pointedly made clear that the United States was acquiring the school sections and no other land. (See pp. 2-3, *supra*.) This sustains the Tribe's position that there was no sale, or cession of the opened lands, and that by the terms of the statutes, Indian title was not extinguished to any land but the school lands.

IV.

General Allotment Act

The respondents pursue the utterly erroneous theme "that, like the *DeCoteau* Act, the Rosebud Acts were also initiated, negotiated and enacted pursuant to Section 5 of the General Allotment Act." (Resp. Br. 28.) The respondents would force parallels with *DeCoteau*, where none exist. (Resp. Br. 22-34.)

None of the three Rosebud statutes was negotiated by the Secretary pursuant to section 5, or any other section, of the General Allotment Act. The negotiations were pursuant to authority contained in the Act of March 3, 1901, c. 832, 31 Stat. 1058, 1077. (Pet. Br. 5-6.) Neither section 5, nor any other section of the General Allotment Act, governs the Rosebud Tribe. The Sioux are

governed by the 1889 Act, legislation enacted exclusively for them. The respondents represent that "[T]he text of Section 12 [of the Sioux 1889 Act] is identical with Section 5 of the General Allotment Act." (Resp. Br. 10.) Not so.

Section 12 of the Sioux 1889 Act does no more than make it lawful for the Secretary of the Interior to negotiate "for the purchase and release" of unallotted land with the tribe's consent, the "sums agreed to be paid by the United States as purchase money" to be credited in the Treasury to the tribe, "which purchase shall not be complete until ratified by Congress." Practically the same language is incorporated in one of the provisos of section 5 of the General Allotment Act. But Section 5 contained many other provisions.⁴

The respondents assert that section 5 contained no restriction on method of payment except that the terms be just and equitable. (Resp. Br. 19-20.) Apart from the fact that neither section 5 nor section 12 comes into play here, the respondents are wrong. Both section 5 and section 12 called for the Secretary to negotiate an outright sale and purchase for an agreed sum to be paid by the United States with the consent of the tribe, to be ratified by Congress. None of these specifics is present in the three Rosebud Acts. There was no "purchase and release", no tribal consent, no purchase price, no agreed sum "to be paid by the United States as purchase money"⁵ and nothing for Congress to ratify. There is no

⁴In addition to the negotiating authority, section 5 imposed restraints on alienation; made applicable state law of descent and partition after patents issued; provided for patents to religious and educational societies occupying certain public lands; and provided for a preferential right of Indian employment. Act of February 8, 1887, c. 119, 24 Stat. 388, 389.

⁵The respondents concede that under the Rosebud statutes, "Homesteaders and not the Government were going to purchase and pay for the land." (Resp. Br. 55.)

room or basis for the respondents to stamp Rosebud with the *DeCoteau* mold.⁶

To the extent that the respondents compare *DeCoteau* and the Sioux 1889 Act (Resp. Br. 29-34) there is a parallel. In both there was present the required "clear" intent to terminate the reservation status. In *DeCoteau*, the intent is evidenced by the tribe's consent to an outright cession for an agreed sum certain. In the Sioux 1889 Act, the intent is evidenced by the Sioux consent to setting up six separate reservations and consent to the provision that expressly "restored to the public domain" the opened land outside of the six reservations. Act of March 2, 1889, c. 405, sec. 21, 25 Stat. 888. See *Mattz v. Arnett*, 412 U.S. 481, 504, n. 22 (1973). The comparison respondents make serves no purpose except to point up the contrast between *Rosebud* and *DeCoteau*.

V.

Operative language

The respondents assert that "[t]he strongest indication of congressional intent to be found within the four corners of the 1904 Act is the operative language of the Act," referring to the language of cession in the 1901 unratified agreement. (Resp. Br. 65.) The respondents declare that "Congress could hardly have adopted a stronger statement of its intention." (Resp. Br. 65.) What the respondents fail to point out is that the language of cession appears in Article I of the 1901 agreement

⁶Here again the respondents refuse to deal with the statute as written. Thus, the respondents omit from the excerpt from section 5 selected for their brief (p. 20) the opening words of the sentence from which their excerpt is lifted reading: "And the sums agreed to be paid by the United States as purchase money for any portion of such reservation shall be held in the Treasury * * *." The words respondents omit are underscored.

to which a three-fourths majority of the male adult Indians consented in writing, but which Congress rejected. (Pet. Br. 7.) Also, the respondents fail to state that the entire 1901 agreement is set out as a preamble preceding the enactment clause of the 1904 Act. To the respondents, the material that precedes the enacting clause is the "operative language." Further the respondents do not tell the Court that in the operative provisions following the enacting clause, Congress repudiated, it did not adopt or ratify the 1901 agreement with its language of cession. (Pet. Br. 35; the 1904 Act is set out at pages 1a-6a of the appendix to the Tribe's opening brief.)

None of the three Rosebud acts contain language of cession. Nor could they. A cession is a sale, a bilateral transaction. (Pet. Br. 29-32.) All three statutes did no more than unilaterally open the unallotted land for sale with the proceeds credited to the Tribe.

VI.

Reserved land

The Tribe pointed to the inconsistency of construing the Rosebud statutes so as to simultaneously terminate the reservation and reserve tribal land for agency, Indian school and religious purposes, and, in the 1910 Act, to reserve the timberland to the Tribe. (Pet. Br. 46.) The respondent answers that such action was "in no way inconsistent with disestablishment," saying that similar provisions were present in *DeCoteau*. (Resp. Br. 97.)

Not so. No land was reserved to the tribe in *DeCoteau*. All tribal land was ceded. There the statute conferred on outside societies a preferential right to purchase the land they occupied for religious and educational purposes. (Pet. Br. 46.) With respect to the timber lands that the

1910 Rosebud Act reserved to the Tribe, the respondent answers with an excerpt from the House debates on the bill that became the Rosebud 1910 Act, where South Dakota Congressman Burke stated (45 Cong. Rec. 5471, April 27, 1910): Resp. Br. 98.):

"* * * As a matter of fact, on this particular reservation there is not a single stick of timber, but the department seems to think the timber ought to be conserved, and so we put this language in the bill."

The Senate Committee report on the same bill spoke quite differently. The report recited (S. Rept. No. 68, 61st Cong., 2d sess. p. 3 (1910) (III App. 1240)):

"It appears there is a very limited amount of timber upon that part of the reservation proposed to be opened, and the Indians were most solicitous that they should be protected and the timber reservation for their use. It is thought by your committee that this request by the Indians is just and reasonable and that the timber lands should be classified without regard to acreage and that they should be reserved for the use of the Indians."

Obviously, Congress would not have reserved timberland to the Tribe if it intended to terminate the reservation.

VII.

The United States did not guarantee payment for opened lands not sold

In Section 21 of the Sioux 1889 Act, the United States entered into a bilateral agreement with the Sioux to buy for fifty cents per acre all lands undisposed of after 10 years. The respondents point to that provision and misleadingly convey the impression that the equivalent thing was done in the three Rosebud Acts, and thus the

tribal interest in all the land was certain to be extinguished with payment. (Resp. Br. 69; 85-86; 98.)

Of course, the United States did not undertake to buy any land from the Rosebud Tribe, or to guarantee payment for lands not sold. Such a provision would have been at war with the last section of each Rosebud statute (pp. 2-3 *supra*), and the conflict would have surfaced long ago. The Rosebud statutes simply prescribed that all lands undisposed of after they were offered for sale for a specific period would ultimately be offered for sale for cash presumably to the highest bidder. (1904 Act, sec. 2, Pet. Br. App. 5a; 1907 Act, sec. 3, Pet. Br. App. 8a; 1910 Act, sec. 6, Pet. Br. App. 12a.) Contrary to the respondents, the United States did not agree to purchase those lands in violation of the last section of each Rosebud statute and did not purchase them. In fact, the undisposed of lands were withdrawn from sale in 1934 and later restored to the Tribe. (Pet. Br. 70.)

VIII.

Subsequent legislation

To determine the intent of Congress the respondents rely on legislation and other materials subsequent to the Rosebud statutes employing the phrase "former Rosebud reservation" or the like. (Resp. Br. 105-115.) Even subsequent legislation that is consistently the same and deals with the same subject and purpose as the prior statute is of doubtful value. (Pet. Br. 64.) Here the statutes on which respondents rely are not concerned with Indian problems. Their purpose was to grant the settlers additional time in which to make payments, or to transfer title to certain lands. They stem from the General Land Office not the Bureau of Indian Affairs. In those statutes Congress was not focusing on the

boundaries of the reservation, or tribal versus State jurisdiction. The statutes simply have no relation to the function of the Rosebud Acts. For that reason language that is no more than a form of identification may not be employed to construe the meaning of the Rosebud statutes. *Erlenbaugh v. United States*, 409 U.S. 239, 243-244 (1972); *Tooahnippah v. Hickel*, 397 U.S. 598, 606-607 (1970).

Moreover, even within respondents' context, the statutes are not consistent. The respondents selected only those items that fit their contention. They bypassed similar statutes and material that do not use the word "former", or the like, but simply refer to the Rosebud Indian Reservation. Such examples appear in Pet. Br. 63-64 and in the brief *amicus* of the United States at pages 46-51, as well as in the administrative material at pages 28-46.

IX

Some of Respondents unsubstantiated statements

The respondents' brief (pp. 135-142) also paints a false picture. The respondents intermix broad exaggerations with unsubstantiated claims and bland assertions contrary to fact. None of respondents' brief-filler has any bearing on whether Rosebud is a reservation. Such unsupported statements have no place in the determination of the case and presumably are advanced as false coloring to camouflage the lack of substantive answers. Should the Court deem any such material in any way relevant to the issue, the Court is respectfully referred to the appendix at pages 1b-3b, *infra*, where the Tribe has responded.

The entire tone of the last portion of respondents' brief gives cause for grave concern as to the treatment

Indians might expect from the respondents' nontribal police, jailers, and courts. This Court was right when it said that "Because of local ill feeling, the people of the States where they [the Indians] are found are often their deadliest enemies". *United States v. Kagama*, 118 U.S. 375, 384 (1886). Unfortunately that observation in large measure still holds true.

CONCLUSION

The judgment of the court of appeals should be reversed with directions to enter a judgment declaring that no part of the Rosebud Reservation, as delimited in the 1889 Act, has been terminated or extinguished.

Respectfully submitted,

MARVIN J. SONOSKY

2030 M Street, N.W.
Washington, D.C. 20036

Attorney for the Petitioner.

APPENDIX

APPENDIX A

Excerpts From Rosebud Sioux Code of Justice

Chapter I

Court and Procedure

Section 1. *Jurisdiction.*

The Rosebud Sioux Tribal Court of the Rosebud Reservation shall have jurisdiction over all offenses when committed by any person within the jurisdiction of the Rosebud Sioux Tribe, as described by the Act of March 2, 1889.

* * *

Chapter 2

Civil Actions

Section 1. *Jurisdiction.*

The Rosebud Sioux Tribal Court shall have jurisdiction over all suits wherein the defendant is a resident within the Rosebud Sioux Indian Reservation boundaries as established by the Act of March 2, 1889, and to such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

* * *

Chapter 6

Removal of Non-Members

* * *

Section 2 *Removal of Non-Members.*

Any person who is not a member of the Rosebud Sioux Tribe, who commits a crime under the Federal or tribal

laws (or a social act which is deemed by the Rosebud Sioux Tribal Court to have been committed by a person of undesirable character) may be forcibly removed from the Rosebud Sioux Indian Reservation by any officer of the Bureau of Indian Affairs or the Rosebud Sioux Tribal Police force by delivering him or her to the nearest reservation boundary with a lawful order of the Court which orders the said person not to return to the Rosebud Sioux Indian Reservation; provided, that any non-Indian or nonmember of the tribe shall be afforded due process of law prior to the issuance of such a Court Order.

This Section was amended by Ordinance RB 74-06 on April 30, 1974.

* * *

APPENDIX B

Response to certain unsubstantiated charges in Respondents' Brief pages 135-142.

A. The undersigned was General Counsel for this Tribe through the years 1956-1969. The respondents, without support or documentation, charge that I advised the Tribe to reject a petition for nomination for tribal office on the ground that residence in Tripp County was not residence on the reservation. (Resp. Br. 136.) That statement is false. At all times during my tenure as General Counsel, the boundaries of the reservation were deemed those fixed by the 1889 Act as recited in Article I of the Tribe's Constitution (App. III, 1394; for full text see United States brief *amicus*, App. B, pp. 6a-22a). The membership of the Tribal Council, then and now, included representatives from the communities located in the full reservation including the areas opened by the three Rosebud Acts. (*Idem*, Article III of the Constitution.)

B. Respondents' bland, unsubstantiated statements that members of the Tribe living on fee land in the three opened counties "have consistently been refused" certain benefits (Resp. Br. 136) and that "for all practical purposes all of the area affected by the three Rosebud Acts has been treated since the Acts as being outside the Rosebud Reservation" (Resp. Br. 127), and like statements sprinkled elsewhere in the brief, are absolutely contrary to fact. (Pet. Br. 65-66; United States brief *amicus*, pp. 28-51.) In particular, contrary to the respondents (Resp. Br. 136-137), the Tribe has constructed housing units in Ideal (Tripp County) and Bull Creek (Tripp County) administered by the Rosebud Housing Authority.

C. The respondents make the unfounded declaration that until recently the Tribe "always" treated the opened area as outside the reservation, and that tribal powers have not been exercised in the area for 65 years. (Resp. Br. 138.)

The opposite is true. The Tribe has consistently exercised jurisdiction over Indians on all parts of the reservation and the Bureau of Indian Affairs has administered the entire area as an Indian reservation. Indians living in the opened areas were reservation Indians as much as Indians living in Todd County. That was true contemporaneously with the three Rosebud Acts and it is true now. (Pet. Br. 65-66; Brief *amicus* for the United States, 28-38; Brief *amici* for the Association on American Indian Affairs and others, 28-39.)

D. The respondents have no license to employ the phrase "resurrection of original boundaries." (Br. 139 and elsewhere.) Such false coloring contributes nothing. In that connection the respondents, inappropriately, slip in a quotation from a television interview with the Chief Judge of the United States District Court for the District of South Dakota. Obviously, respondents' game plan is to convey the impression, with the imprimatur of a Federal Judge, that law and order on Rosebud is in a state of chaos.

In a conversation with Chief Judge Nichol concerning the respondents' quotation, Judge Nichol authorized the undersigned to state that the quoted excerpt was directed to the need for an additional judge and nothing more. Judge Nichol was addressing himself to the increased case load in his court "both civil and criminal". He mentioned Rosebud with the largest filing of criminal cases. The increase in the dockets of most federal district courts is common knowledge. Whatever the causes for the

increased burden in South Dakota, none supply a reason for destroying the reservation status and turning the Indians over to the State.

E. The respondents pretend alarm because under the Rosebud Code of Justice, the Tribal Court has jurisdiction over all persons on the reservation and the Tribe has an ordinance providing that, under order of the Tribal Court, any nonmember of the Tribe "who commits a crime under Federal or tribal laws (or a social act which is deemed by the Rosebud Sioux Tribal Court to have been committed by a person of undesirable character) may be forcibly removed from the Rosebud Sioux Indian Reservation * * *." See Appendix A; again the respondents inaccurately quote by substituting "socially undesirable" for "a social act". (Resp. Br. 139.)

The law is clear that Indian tribes have the power to exclude non-members from the reservation where authorized by treaty. *Federal Indian Law*, pp. 438-439 (GPO 1958). The necessary treaty language is in Article 2 of the Sioux Treaty of 1868, guaranteeing "absolute and undisturbed use and occupation", and forbidding any persons, except the Federal officers authorized by the treaty, from entering on the reservation. (See Pet. Br. 4; also, *Dodge v. Nakai*, 298 F. Supp. 26, 29 (D. Ariz. 1969).) If the exercise of the power of removal is unlawful, the matter is for the courts or Congress.

The question of whether tribes have jurisdiction over nonIndians on the reservation is now before this Court on petition for a writ of certiorari to the Court of Appeals for the Ninth Circuit in *Oliphant v. Suquamish Indian Tribe*, No. 76-5729, October Term 1976. In that case the court of appeals held that the tribe did have jurisdiction over an offense by a nonIndian against an Indian on tribal trust land on the reservation. The fact

that the Rosebud Tribe is exercising a power that has been sustained by the Ninth Circuit is not a reason for terminating the reservation status.

F. The respondents make the claim that no harm would come if the Rosebud Reservation were limited to Todd County saying that *Morton v. Ruiz*, 415 U.S. 199 (1973), "expanded the Tribe's geographical area in terms of provision of services and benefits although not with respect to jurisdiction and authority" (Resp. Br. 140). *Morton v. Ruiz* held that the Bureau of Indian Affairs is obligated to administer the benefits of the Snyder Act (25 U.S.C. 13) to Indians who live "near" as well as those who lived "on" reservations. *Morton v. Ruiz* does not have any connection with the boundaries of the Rosebud Reservation as established by Congress, nor obviously does it expand the Tribe's geographical area for any purpose. Indians on the open areas reside from 35 to 140 miles from tribal headquarters in Todd County. If Todd County constituted the reservation, it is doubtful whether those Indians live "near" the reservation.

Supreme Court, U. S.
FILED

SEP 29 1976

MICHAEL RODAK, JR., CLERK

No. 75-562

In the Supreme Court of the United States

OCTOBER TERM, 1976

ROSEBUD SIOUX TRIBE, PETITIONER

v.

HONORABLE RICHARD KNEIP, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

ROBERT H. BORK,

Solicitor General,

PETER R. TAFT,

Assistant Attorney General,

H. BARTOW FARR,

Assistant to the Solicitor General,

EDMUND B. CLARK,

NEIL T. PROTO,

Attorneys,

Department of Justice,

Washington, D.C. 20530.

INDEX

	Page
Opinions below.....	1
Jurisdiction	1
Question presented.....	2
Statutes involved.....	2
Statement	2
Summary of Argument.....	7
Argument:	
I. The decisions of this Court hold that Acts of Congress establishing trusts for the sale of Indian lands do not reduce Reservation boundaries.....	10
II. The Acts of 1904, 1907 and 1910 did not restore Indian lands to the public domain.....	17
III. The Department of the Interior has administered the Rosebud Reservation in accordance with the boundaries established in 1889.....	28
IV. The legislative history shows that Congress did not consider questions of jurisdiction and is therefore of marginal benefit in this case.....	38
Conclusion	51
Appendix A.....	1A
Appendix B.....	6A
Appendix C.....	23A
Appendix D.....	33A
Appendix E.....	35A
Appendix F.....	38A
Appendix G.....	41A
Appendix H.....	44A
Appendix I.....	53A

CITATIONS

Cases:

<i>Ash Sheep Co. v. United States</i> , 252 U.S. 159.....	23, 24-25
<i>Carpenter v. Shaw</i> , 280 U.S. 363.....	10
<i>City of New Town, North Dakota v. United States</i> , 454 F. 2d 121.....	7, 13, 16, 23

Cases—Continued

<i>Confederated Bands of Ute Indians v. United States</i> , 100 Ct. Cl. 413.....	Page 31
<i>Confederated Salish and Kootenai Tribes v. Moe</i> , 392 F. Supp. 1297.....	50
<i>Confederated Salish and Kootenai Tribes v. Namen</i> , 380 F. Supp. 452, affirmed, 534 F. 2d 1376, pending on petition for certiorari, No. 76-185.....	16, 50
<i>Crow Dog, Ex Parte</i> , 109 U.S. 556.....	32
<i>DeCoteau v. District County Court</i> , 420 U.S. 425.....	6,
7, 10, 14, 15, 18, 21, 39, 42	
<i>Federal Power Commission v. Tuscarora Indian Na- tion</i> , 362 U.S. 99.....	21
<i>Heff, In re</i> , 197 U.S. 488.....	40
<i>Leech Lake Band of Chippewa Indians v. Herbat</i> , 334 F. Supp. 1001.....	16
<i>Lone Wolf v. Hitchcock</i> , 187 U.S. 553.....	16
<i>Mattz v. Arnett</i> , 412 U.S. 481.....	passim
<i>Minnesota v. Hitchcock</i> , 185 U.S. 373.....	9, 19, 20, 21
<i>Newhall v. Sanger</i> , 92 U.S. 761.....	19
<i>New York ex rel. Ray v. Martin</i> , 326 U.S. 496.....	27
<i>Putnam v. United States</i> , 248 F. 2d 292.....	16, 44
<i>Rice v. Olson</i> , 324 U.S. 786.....	16, 27
<i>Russ v. Wilkens</i> , 410 F. Supp. 579.....	16
<i>Seymour v. Superintendent</i> , 368 U.S. 351.....	passim
<i>United States v. Kagama</i> , 118 U.S. 375.....	10
<i>United States v. McBratney</i> , 104 U.S. 621.....	27
<i>United States v. Nice</i> , 241 U.S. 591.....	13-14
<i>United States v. Washington</i> , 496 F. 2d 620, certiorari denied, 419 U.S. 1032.....	50
<i>United States ex rel. Condon v. Erickson</i> , 478 F. 2d 684.....	7
	13, 16, 44
<i>Ute Indians v. United States</i> , 45 Ct. Cl. 440.....	31
Treaty and statutes:	
Treaty of 1868, 15 Stat. 635, 639.....	16, 41
Act of March 2, 1889, 25 Stat. 888.....	2
25 Stat. 986.....	2
25 Stat. 888-890.....	2
Act of March 3, 1891, 26 Stat. 989, 1035.....	14, 20
Act of March 2, 1901, 31 Stat. 950.....	19

Treaty and statutes—Continued

Act of April 23, 1904, 33 Stat. 254.....	Page passim
Section 2.....	3
Section 4.....	42
Section 6.....	3, 4, 6, 41
Act of March 22, 1906, 34 Stat. 80.....	11
34 Stat. 80.....	11
34 Stat. 81.....	11
34 Stat. 82.....	11
Act of March 2, 1907, 34 Stat. 1230.....	passim
Section 5.....	4
Section 8.....	4, 6
Act of May 29, 1908, 35 Stat. 460.....	13
Act of May 30, 1910, 36 Stat. 448.....	passim
Section 1.....	43
Section 2.....	43
Section 4.....	5
Section 7.....	6
Section 11.....	6
Act of June 1, 1910, 36 Stat. 455.....	13
General Allotment Act of 1887, 24 Stat. 388.....	13
Indian Reorganization Act of 1934, 48 Stat. 984, as amended, 25 U.S.C. 461 <i>et seq.</i>	9, 14, 28
Section 3.....	28, 30, 32
Section 7.....	28, 32
Section 8.....	28, 30
Section 16.....	32
15 Stat. 221.....	18
19 Stat. 254, 257 (Art. 9).....	32
25 Stat. 233.....	32
25 Stat. 676, 679, Section 10.....	21
27 Stat. 62.....	11
27 Stat. 63.....	11, 18
33 Stat. 218.....	18
33 Stat. 302.....	50
33 Stat. 352-356.....	24
33 Stat. 361:	
Section 6.....	24
Section 8.....	24
33 Stat. 700.....	46

IV

Treaty and statutes—Continued		Page
34 Stat. (Part III) 3200.....		24
35 Stat. 781.....		46
35 Stat. 808, Section II.....		46
35 Stat. 809.....		46
37 Stat. 21.....		47
70 Stat. 626.....		33
78 Stat. 560.....		33
18 U.S.C. 1151.....	11, 12	
42 U.S.C. 1460(h).....		38
Congressional material:		
45 Cong. Rec. 5460-5464 (1910).....		40
45 Cong. Rec. 5794 (1910).....		22
45 Cong. Rec. 6741 (1910).....		22
47 Cong. Rec. 3840-3841 (1911).....		47
51 Cong. Rec. 8790 (1914).....		25
51 Cong. Rec. 8791 (1914).....		25
56 Cong. Rec. 6469 (1918).....		47
58 Cong. Rec. 4933 (1919).....		47
92 Cong. Rec. 6920 (1946).....		49
92 Cong. Rec. 7120 (1946).....		49
92 Cong. Rec. 7399-7400 (1946).....		49
93 Cong. Rec. 3219 (1947).....		49
Hearings on H.R. 7902 before the House Committee on Indian Affairs, 73d Cong., 2d Sess. (1934).....		29
Hearings on S. 2755 before the Senate Committee on Indian Affairs, 73d Cong., 2d Sess. (1934).....	28-29	
H.R. Rep. No. 2948, 56th Cong., 2d Sess. (1901).....		19
H.R. Rep. No. 2099, 57th Cong., 1st Sess. (1902).....		21
H.R. Rep. No. 4198, 58th Cong., 3d Sess. (1905).....		45
H.R. Rep. No. 742, 65th Cong., 2d Sess. (1918).....		47
S. Rep. No. 662, 57th Cong., 1st Sess. (1902).....		21
S. Rep. No. 2760, 58th Cong., 3d Sess. (1905).....	45, 46	
S. Rep. No. 1166, 62d Cong., 3d Sess. (1913).....		44
S. Rep. No. 1442, 79th Cong., 2d Sess. (1946).....		49
Interior Decisions:		
37 I.D. 442-443.....		34
42 I.D. 292.....		34
54 I.D. 559.....	12, 14, 29	

V

Interior Decisions—Continued

	Page
54 I.D. 560.....	30
54 I.D. 561, 562.....	31
56 I.D. 330, 333.....	30
Miscellaneous:	
Comment, <i>New Town et al.: The Future of an Illu-</i> <i>sion</i> , 18 S.D.L.Rev. 85 (1973).....	38
<i>Report of Commissioner of Indian Affairs, 1879</i>	32
<i>Report of Commissioner of Indian Affairs, 1881</i>	32
<i>Report of Commissioner of Indian Affairs, 1890</i>	32
<i>Report of Commissioner of Indian Affairs, 1897</i>	32
U.S. Department of Interior, <i>Federal Indian Law</i> (1958)	27

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-562

ROSEBUD SIOUX TRIBE, PETITIONER

v.

HONORABLE RICHARD KNEIP, ET AL.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT*

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-61) is reported at 521 F. 2d 87. The opinion of the district court (Pet. App. 63-113) is reported at 375 F.Supp. 1065.

JURISDICTION

The judgment of the court of appeals was entered on July 16, 1975 (Pet. App. 61). A petition for a writ of certiorari was filed on October 11, 1975, and was granted on May 24, 1976. The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether three Acts of Congress, which authorized the sale of land within portions of the Rosebud Indian Reservation to non-Indians and directed that the proceeds of each sale as received should be deposited in trust for the benefit of the Tribe, diminished the exterior boundaries of the Reservation as they existed in 1889.

STATUTES INVOLVED

The Acts of April 23, 1904, 33 Stat. 254; March 2, 1907, 34 Stat. 1230; and May 30, 1910, 36 Stat. 448, are set forth in Appendix C to the petition.

STATEMENT

In June 1972, the Rosebud Sioux Tribe of Indians filed suit in the United States District Court for the District of South Dakota, seeking a declaratory judgment that the exterior boundaries of the Rosebud Reservation, as defined in the Act of March 2, 1889, 25 Stat. 888, had not been altered by three Acts of Congress (Act of April 23, 1904, 33 Stat. 254; Act of March 2, 1907, 34 Stat. 1230; Act of May 30, 1910, 36 Stat. 448) opening certain unallotted surplus land to non-Indian settlement.

In the Act of March 2, 1889, Congress "restored to the public domain" (25 Stat. 896) one-half of the Great Sioux Reservation established in 1868, but preserved for the Sioux Tribes six Reservations in present-day North and South Dakota (*id.* at 888-890). Among these was the Rosebud Reservation, located in the south central portion of South Dakota, and com-

posed of the Counties of Todd, Tripp and Mellette, and parts of Gregory and Lyman counties.¹

In 1901, the Rosebud Tribe agreed (Pet. App. 15, n. 21) to "cede * * * and convey to the United States" for a specified sum of \$1,040,000 the unallotted land within the Gregory County portion of its Reservation for non-Indian settlement. Congress rejected this agreement in 1902 and 1903. The problem "was, simply put, money" (Pet. App. 16). Congress then "amended and modified" the agreement (Pet. App. 117) and enacted it as the Act of April 23, 1904 (Pet. App. 117-120). The primary amendments were that (1) the Indians were not guaranteed any consideration for the land except with respect to the 16th and 36th sections (school sections), but were to be paid only as the lands were actually sold to settlers;² (2) the United States did not guarantee to find purchasers but agreed only to "act as trustee for said Indians to dispose of said lands" (Section 6, Pet. App. 120); and (3) limitations were placed on the distribution of the proceeds to the Indians (compare Art. III, Pet. App. 118, with Art. III, Pet. App. 115-116).

The Rosebud Reservation was further opened by the 1907 Act, which, as passed, provided (Pet. App. 121) "that the Secretary of the Interior * * * is here-

¹ A map of the Reservation, showing the 1889 boundaries and the boundaries as found by the court of appeals, is reproduced at Pet. App. 113.

² Section 2 of the Act (Pet. App. 119) set forth a schedule of the prices per acre for the land, which varied according to the time at which the land was sold.

by, authorized and directed, * * * to sell or dispose of all that portion of the Rosebud Indian Reservation * * * [within Tripp County] except such portions thereof as have been, or may hereafter be, allotted to Indians" (and except school sections that were to be paid for by the United States, and granted to the State).³ The 1907 Act further provided (Section 5, Pet. App. 122-123) that the funds received should be deposited in an interest-bearing account in the Treasury of the United States "to the credit of the Indians belonging and having tribal rights on the Rosebud Reservation," that the interest shall be paid annually to the Indians, that all funds up to one million dollars should be distributed after ten years on a per capita basis to the Indians, and that the balance should be expended or distributed for the Indians' benefit at the discretion of the Secretary of the Interior. The 1907 Act concluded, as did the 1904 Act (Section 6, Pet. App. 120), with a section declaring (Section 8, Pet. App. 123):

* * * nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guar-

³ Each Act contains substantially identical school land provisions to the effect that Sections 16 and 36 of the lands in each township are not to be disposed of, but are reserved for donation to the State for use as common schools. These lands were to be paid for by the federal government. See Pet. App. 120, 121, 123, 127.

antee to find purchasers for said lands or any portion thereof, it being the intention of this act that the *United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided* * * *. [Emphasis added.]

The 1910 Act (Pet. App. 124-127), like the 1907 Act (Pet. App. 121), began with an authorization to the Secretary to "sell and dispose" of surplus lands within a described portion (Mellette County) of the Reservation (Pet. App. 124).⁴ The Act further provided (*ibid.*)

[t]hat any Indians to whom allotments have been made on the tract to be *ceded* may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation * * *. [Emphasis added.]

The 1910 Act further required (Section 4, Pet. App. 125) that a commission be established, composed of "[o]ne resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians," to determine the price settlers would be charged for the land. The proceeds of any eventual sales were to be deposited in the Treasury to the credit of the "Indians belonging and having tribal rights on the said reservation," which "shall be at

⁴ The 1907 Act uses the phrases "sell or dispose" (emphasis added).

all times subject to appropriation by Congress for their education, support, and civilization" (Section 7, Pet. App. 126). The 1910 Act (Section 11, Pet. App. 127), like the earlier Acts (Section 6, Pet. App. 120; Section 8, *id.* at 123), explicitly stated that the United States was not obligated to purchase the surplus land, except Sections 16 and 36 for school purposes, and would act only as trustee for the Indians in disposing of the surplus land.

In a lengthy opinion the district court held that each of the 1904, 1907 and 1910 Acts extinguished the portion of the Reservation to which it applied (Pet. App. 63-113; see *id.* at 113). The court found no language in the Acts expressly terminating the Reservation in the counties involved and no "express discussion of state versus federal jurisdiction over the lands in question" (*id.* at 85); however, the court held that, in light of the "surrounding legislative history and the circumstances" (*id.* at 109) from 1901 to 1910, Congress intended to extinguish the portions of the Reservation at issue.

The United States Court of Appeals for the Eighth Circuit affirmed (Pet. App. 1-61), after this Court had decided *DeCoteau v. District County Court*, 420 U.S. 425. The court rejected arguments of the Tribe, and the United States as *amicus curiae*, that the language of the Acts interpreted in light of prior decisions of this Court did not abolish the disputed portions of the Reservation, and that neither the legislative nor the administrative history established that the State had undisputed jurisdiction to the

exclusion of the Tribe and the United States. The court thought that prior decisions, including this Court's decisions in *Seymour v. Superintendent*, 368 U.S. 351, and *Mattz v. Arnett*, 412 U.S. 481, and its own decisions in *City of New Town, North Dakota v. United States*, 454 F. 2d 121, and *United States ex rel. Condon v. Erickson*, 478 F. 2d 684, were "of limited utility" in deciding this case (Pet. App. 5) and concluded that "the overriding judicial inquiry remains unchanged, namely, the congressional intent" (*ibid.*). Stating that this Court's decision in *DeCoteau*, *supra*, permitted it to utilize "all materials reasonably pertinent to the legislation * * * as well as those bearing upon the historical context of its passage, such as the social forces then at work in the area * * *" (Pet. App. 8), the court found a "continuity" of circumstances from 1901 to 1910 that demonstrated Congress' intention to extinguish Indian jurisdiction over the areas in question (*id.* at 26-28, 34, 38, 39-40, 44, 46, 48).

SUMMARY OF ARGUMENT

It is the position of the United States that the Acts of 1904, 1907, and 1910, while opening portions of the Rosebud Reservation to non-Indian settlers, did not contract the exterior boundaries of the Reservation. This position is based upon our assessment of the Acts themselves, the contemporary social and legislative history, subsequent treatment of the lands by the Department of the Interior, and doctrines developed by this Court in similar cases. While the courts below gave some attention to each of these

factors, we believe that the courts overemphasized inconclusive legislative history. A more balanced analysis, we submit, requires a finding that Congress did not intend by these Acts to terminate most of the Reservation but expected that termination would occur, if at all, when the trust period on allotments expired.

This Court's decisions require compelling evidence to prove that reservation boundaries have been cut back without the consent of the affected Indian tribe and without guaranteed payment for the opened lands. Any different construction would place Indians in the position of surrendering jurisdiction over substantial portions of their reservation before any benefits had been assured or received. Thus, the Court found in *Seymour v. Superintendent*, 368 U.S. 351, and *Mattz v. Arnett*, 412 U.S. 481, that unilateral Acts of Congress, providing that the United States would not purchase Indian lands but would merely act as trustee for their sale, did not commit the opened lands to state jurisdiction. The Acts opening the Rosebud Reservation were drafted in similar fashion and are to the same effect.

The Acts of 1904, 1907, and 1910, do not demonstrate an intention to return lands to the public domain, and the clear language of other Acts expressly restoring lands to the public domain is notably absent. In contrast to public lands, which are subject to disposition under general laws, the lands of the Rosebud Reservation were to be sold only in accordance with the terms of the trust established by Congress; all

proceeds were explicitly dedicated to the benefit of the Tribe. In fact, Congress included a provision granting school lands to the State in each Act, despite this Court's holding in 1902 that such provisions were unnecessary when lands were restored to the public domain. *Minnesota v. Hitchcock*, 185 U.S. 373.

Subsequent administrative actions confirm that the Acts did not disestablish the 1889 boundaries of the Reservation. Under the Indian Reorganization Act of 1934, 48 Stat. 984, as amended, 25 U.S.C. 461, *et seq.*, the Department of the Interior restored to Indian ownership lands in the opened portion of the Reservation, an action that could not have included lands "upon the public domain outside the geographic boundaries of any Indian reservation * * *" (48 Stat. 986). Moreover, numerous communications and reports show that the Department, before and after the Indian Reorganization Act, recognized territory in the opened counties as within the Rosebud Reservation. Recent appropriations are consistent with that viewpoint.

The uncertain legislative history does not demonstrate a contrary intention. Despite the emphasis placed on the legislative history by the court of appeals, the reports and debates show that Congress at no time concerned itself with the question of jurisdiction over the opened lands. While the court of appeals stressed references made in unrelated contexts, we submit that the inferences to be drawn from such references are at best ambiguous. They do not merit the weight that they received in the court of appeals.

The Acts of 1904, 1907, and 1910, therefore, do not demonstrate congressional intent to impede the Tribe's right to govern its own people.

ARGUMENT

I. THE DECISIONS OF THIS COURT HOLD THAT ACTS OF CONGRESS ESTABLISHING TRUSTS FOR THE SALE OF INDIAN LANDS DO NOT REDUCE RESERVATION BOUNDARIES

This Court, in deciding Indian cases, does not write upon a fresh slate. The Court has long recognized that "[t]he relation of the Indian tribes living within the borders of the United States * * * [is] an anomalous one and of a complex character." *United States v. Kagama*, 118 U.S. 375, 381. "Indian tribes are the wards of the nation. They are communities dependent on the United States." *Id.* at 383-384 (emphasis in original). With respect to legislation, therefore, "[d]oubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith." *Carpenter v. Shaw*, 280 U.S. 363, 367.

During the past fifteen years this Court has been asked three times to decide whether Congress intended to cut back reservation boundaries or to open up reservation lands for settlement with the existing boundaries unchanged. *Seymour v. Superintendent*, 368 U.S. 351; *Mattz v. Arnett*, 412 U.S. 481; *DeCoteau v. District County Court*, 420 U.S. 425. The principles developed by those decisions are directly applicable to the questions raised in this case.

In *Seymour*, this Court considered the effect of the Act of March 22, 1906, 34 Stat. 80, on the Colville Indian Reservation in the State of Washington. In 1892, the United States expressly vacated and restored a portion of the Reservation "to the public domain," 27 Stat. 62, 63. In the 1906 Act, however, no such language was included; the Secretary was merely directed "to sell or dispose" of unallotted lands within the Reservation (34 Stat. 80) and to place the proceeds as received from settlers into the Treasury for the benefit of the Indians (34 Stat. 81). The Act further provided that the United States would act as a trustee in disposing of these lands for the Indians' benefit and not as a purchaser (34 Stat. 82). Because *Seymour* involved a criminal matter, this Court assessed the meaning of the 1906 Act against the backdrop of the definition of "Indian Country" found in 18 U.S.C. 1151.⁵

This Court concluded that "the purpose of the 1906 Act was neither to destroy the existence of the diminished Colville Indian Reservation nor to lessen federal responsibility for and jurisdiction over the Indians having tribal rights on that reservation." 368 U.S. at 356. The Colville Act "did no more than open the way for non-Indian settlers to own land on the

⁵ Indian country is defined, in part, as "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation * * *."

reservation in a manner which the Federal Government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards" (*ibid.*). The Court noted that any other conclusion would result in checkerboard jurisdiction over Indians, a consequence that Congress sought to avoid by enacting 18 U.S.C. 1151 (*id.* at 358).⁶

In *Mattz* this Court was required to decide whether the Klamath River Indian Reservation in California was terminated by an 1892 Act of Congress or remained Indian country as defined in 18 U.S.C. 1151 (412 U.S. at 483). After assessing legislative history and subsequent administration of the land by the Interior Department, the Court concluded, as it had in *Seymour*, that the mere opening of the Reservation to settlers did not mean that the Reservation was discontinued. Recognizing that "the House was generally hostile to continued reservation status of the land," the Court nonetheless found that Congress never terminated it (*id.* at 499)⁷ but merely provided

⁶ This Court took particular note of the subsequent treatment of this area by Congress and by the Interior Department, and gave particular attention to the Department's decision, 54 I.D. 559, that land within the Colville Reservation previously opened to settlement could be restored to Reservation status under the Indian Reorganization Act of 1934 (368 U.S. at 357, n. 14). This Court recognized a period of "congressional confusion" when the area was referred to as the "former Colville Reservation" (*id.* at 356, n. 12), but did not find such references indicative of a Congressional intent to terminate jurisdiction over the Reservation.

⁷ The State urged that a reference in the 1892 Act to "what was [the] Klamath River Reservation," indicated a Congressional intention to terminate. This Court found the reference to the

for sale of the surplus lands with the "proceeds of sales to be held in trust for the 'maintenance and education' * * * of the Indians" (*id.* at 504). Because a decision to terminate a reservation "must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history" (*id.* at 505), this arrangement did not deprive the Indians of their important reservation rights.⁸

Placing the 1892 Act into the historic context of the General Allotment Act of 1887, 24 Stat. 388, the Court further observed that the Allotment Act "permitted the President to make allotments of reservation lands to resident Indians and, with tribal consent, to sell surplus lands. Its policy was to *continue the reservation system* and the trust status of Indian lands, but to allot tracts to individual Indians for agriculture and grazing. *When all the lands had been allotted and the trust expired, the reservation could be abolished*" (412 U.S. at 496; emphasis added). See also *United States v. Nice*, 241 U.S. 591, 599. However, enactment

Reservation "in the past tense * * * merely * * * a natural, convenient and shorthand way of identifying the land subject to allotment * * *" (*id.* at 498). Cf. *Seymour*, *supra*, 368 U.S. at 356, n. 12.

⁸ After this Court's decision in *Seymour*, the Eighth Circuit considered whether the Act of May 29, 1908, 35 Stat. 460, opening the Cheyenne River Reservation in South Dakota, diminished its boundaries. Relying on *Seymour*, it held it did not, *United States ex rel. Condon v. Erickson*, 478 F. 2d 684 (C.A. 8), and this Court in *Mattz* twice noted that decision with approval, remarking that it presented "issues not unlike those before us" (412 U.S. at 497, n. 19 and 505, n. 23). The Eighth Circuit had reached a similar conclusion in *City of New Town, North Dakota v. United States*, 454 F. 2d 121, involving the effect of the Act of June 1, 1910, 36 Stat. 453, opening the Fort Berthold Reservation.

of the Indian Reorganization Act in 1934, 48 Stat. 984, as amended, 25 U.S.C. 461 *et seq.*, ended the policy of allotment, and all trust periods were indefinitely extended (412 U.S. at 496, n. 18). Later, as the Court noted, portions of the land in the Klamath Reservation previously opened to settlement were withdrawn and restored to tribal ownership (*id.* at 496, n. 17 and 505).⁹

In *DeCoteau*, the Court determined the effect of the Act of March 3, 1891, 26 Stat. 989, 1035, on the Lake Traverse Reservation. The 1891 Act had ratified an agreement in which the Tribe expressly ceded to the United States all its "right, title and interest" in the land for a lump sum. The Court contrasted this transaction with the Acts involved in *Seymour* and *Mattz* (420 U.S. at 447-449), stating that it "adhere[d] without qualification to both the holdings and the reasoning of those decisions"; the Court, however, found that "gross differences between the facts * * *" (*id.* at 447) justified a finding that the Reservation had been terminated.

The differences identified by the Court are important to the present case. The 1891 Act was a negotiated agreement with the Tribe, whereas the Acts involved in *Seymour* and *Mattz* were "unilateral" Acts of Congress not agreed to by the Tribes (*id.* at 448). The 1891 Act was a straightforward cession for a sum certain in amount, and not the arrangement found in *Mattz* and *Seymour* where proceeds from

⁹ The Klamath River Reservation was also identified by the Interior Department (54 I.D. 559), as containing land, opened by the 1892 Act, which could be restored to reservation status.

uncertain future sales were placed in trust for the benefit of the Tribe (*id.* at 448-449). The Department of the Interior did not, as it had in *Mattz* and *Seymour*, consistently regard the Reservation as continuing (*id.* at 448). These distinctions led to the conclusion that the Lake Traverse Reservation was extinguished and the land restored to the public domain.

The fact that the Indians' land holdings would be diminished as the land was sold, therefore, does not mean that the Rosebud Reservation itself was abolished in the areas where the land subject to sale was located. In *DeCoteau* (but not in *Seymour* or *Mattz*) the United States itself purchased the land in the Reservation pursuant to an agreement with the Indians; this, the Court held, restored the land to the public domain and extinguished the Reservation. 420 U.S. at 447-449. But under the Rosebud Acts, the federal government did not buy the Indians' land. The government acted merely as a trustee for the Tribe in selling its land to non-Indians; the land passed from the Indians to private individuals. It was not first made part of the public domain, and Congress appropriated no funds to pay for these lands, except for school sections. Rather, any funds distributed to or deposited on behalf of the Indians were to be derived from amounts paid by the non-Indian purchasers. If there were no buyers interested in the land the government was to sell for the Indians, the Indians would have received no money; yet according to the reasoning of the court below, the Tribe nevertheless would have been deprived of three-fourths of its Reservation.

Such an intention should not be attributed to Congress without the clearest kind of evidence.

Every court faced with similar questions, except the courts below, has found that such Acts of Congress did not extinguish portions of the Reservations but instead opened the Reservations to allow integration of Indians and settlers and to provide needed lands for the western migration.¹⁰ This construction is consistent not only with proper concern for Indian sovereignty but also with the long-standing reluctance to place Indian wards within the reach of state jurisdiction. "The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history." *Rice v. Olson*, 324 U.S. 786, 789.

Although the court of appeals found these principles "of limited utility" (Pet. App. 5), we believe they may not be so lightly dismissed.¹¹ While we do not read

¹⁰ *Russ v. Wilkens*, 410 F. Supp. 579 (N.D. Cal.); *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001 (D. Minn.); *City of New Town, North Dakota v. United States*, 454 F. 2d 121 (C.A. 8); *United States ex rel. Condon v. Erickson*, 478 F. 2d 684 (C.A. 8); *Putnam v. United States*, 248 F. 2d 292 (C.A. 8); *Confederated Salish and Kootenai Tribes v. Namen*, 380 F. Supp. 452 (D. Mont.), affirmed, 534 F. 2d 1376 (C.A. 9), pending on petition for certiorari, No. 76-185.

¹¹ The court of appeals apparently misunderstood (Pet. App. 24-25) the significance of the fact that Congress did not secure the approval of the Rosebud Indians as required by the Treaty of 1868 (15 Stat. 635, 639). While Congress had the power to dispose of lands without such consent, *Lone Wolf v. Hitchcock*, 187 U.S. 553, its decision to do so must be regarded as unilateral. In fact, the government's negotiator, Inspector James McGlaughlin, repeatedly stressed to the Indians that their lands could be sold without their consent and that they should redirect their efforts to securing a reasonable price. *E.g.*, A. 476, 481, 490, 776, 803-804.

the cases to say that Congress could never remove lands from a reservation by a unilateral decision to act as trustee for their sale, that construction should be greatly disfavored. This is particularly true when, as here, Congress demonstrated quite clearly that it did not intend to place the Indian lands within the public domain.

II. THE ACTS OF 1904, 1907 AND 1910 DID NOT RESTORE INDIAN LANDS TO THE PUBLIC DOMAIN

The United States does not dispute that Congress during the early 1900's expected that Indian reservations at some point would be abolished. Congress was faced with pressures to open additional land located within existing Indian reservations and Congress itself desired that Indians gradually develop a less tribal way of life. The integration of Indians with white settlers was viewed as an important step in that development. The question in this case, therefore, is not whether Congress intended the Rosebud Reservation to continue unchanged indefinitely but whether termination was to occur immediately upon passage of the Acts or at some later time, when the trust period on allotted Indian lands had expired.

1. The language of the Acts themselves does not disclose an intent to return land to the public domain. The 1904 Act provides for the Indians to "cede, surrender, grant and convey to the United States all their claim, right, title and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted [within Gregory County]" (Pet. App. 115), but that terminology was simply carried over from the un-

ratified agreement for sale at a sum certain. The 1904 Act nowhere provides that the Reservation was abolished or that the lands were to be restored to the public domain. The Acts of 1907 and 1910 provide that the Secretary of the Interior shall "sell or dispose" (in the 1907 Act) or "sell and dispose" (in the 1910 Act) "of all that portion of the Rosebud Indian Reservation" subsequently described (Pet. App. 121, 124). Again no mention is made that the Reservation is *pro tanto* terminated or that the lands were to become public lands. This reticence is in marked contrast to the express language used by Congress in other statutes. See 15 Stat. 221 (1868) ("the Smith River reservation is hereby discontinued"); 27 Stat. 63 (1892) ("the same being a portion of the Colville Indian Reservation * * * be, and is hereby, vacated and restored to the public domain"); 33 Stat. 218 (1904) ("the reservation lines of the said Ponca and Otoe and Missouri Indian reservations be, and the same are hereby, abolished"). See also *Mattz v. Arnett*, *supra*, 412 U.S. at 504, n. 22.¹²

The mere fact that the government had power to sell the Indians' lands does not mean that they are public lands. "The words 'public lands' are habitually

¹² The language of the 1904 Act is similar to the statutory language discussed in *DeCoteau*, *supra*, and found sufficient to terminate the Reservation. But Congress had *ratified* a sale for a sum-certain in that case, and the words of cession in that context merely reflected the common understanding of the Indians and the government. The words in this case were originally part of a similar agreement, which Congress refused to ratify. Although Congress retained the form of the agreement in passing the 1904 Act, the language disappeared in the Acts of 1907 and 1910, both of which were passed without tribal consent.

used in our legislation to describe such as are subject to sale or other disposal under general laws." *Newhall v. Sanger*, 92 U.S. 761, 763. The United States commonly owns public lands free of beneficial rights and may dispose of them for its own benefit. Its power over the Rosebud Reservation lands, however, was significantly different; under the Acts of 1904, 1907, and 1910, the United States could sell the lands only under specified conditions and was required to administer the proceeds for the benefit of the Rosebud Indians. Unlike agreements providing for sale for a sum-certain, the three Acts in question specifically stated that the United States did not guarantee to buy, or even to find purchasers for, the affected lands. In fact, part of the lands was later released from the trust in accordance with the Indian Reorganization Act of 1934 (pp. 28-33, *infra*; App. A, *infra*, p. 1A).

The provision for school lands in each of the three Acts indicates that Congress was aware of the nature of this trust. In May 1902, this Court, in *Minnesota v. Hitchcock*, 185 U.S. 373, had considered the troublesome question whether a cession-in-trust to the government for resale gave Minnesota the right to Sections 16 and 36 of the ceded lands for school purposes.¹³

¹³ Congress was well aware of the importance of *Minnesota v. Hitchcock*. After the Department of the Interior moved to dismiss the State's original action in this Court, on the ground that the Chippewa Indians were indispensable parties, Congress passed an Act expressly permitting the Interior Department to appear instead of the tribe in such cases. Act of March 2, 1901, 31 Stat. 950. The Committee Report on the bill (H.R. 14191) stated that "it is of the utmost consequence * * * that there be the most speedy determination of a vexed question that has dragged through forty years" (H.R. Rep. No. 2948, 56th Cong., 2d Sess. 1 (1901)).

(The Enabling Act admitting Minnesota to the Union, like the Enabling Act for South Dakota, provided that the State was entitled to Sections 16 and 36 from all "public lands" within the State for schools.) This Court concluded that, while Minnesota would be entitled to Sections 16 and 36 of public lands even though no express exception in the instrument of conveyance was made (185 U.S. at 392-393), the land in question had never been restored to the public domain because the cession was in trust and the proceeds from uncertain future sales were to be deposited in the Treasury for the Indians' benefit (185 U.S. at 395). Thus Congress, if it wanted the State to receive Sections 16 and 36 while they remained within the opened Indian reservation, had to include an express provision to that effect. Such provisions were contained in all three Rosebud Acts.¹⁴

The legislative history of these provisions, though sparse, is instructive. In 1902, bills were introduced to ratify the Agreement negotiated with the Tribe in the previous year. The bill reported to the Senate, in addition to supporting approval of the Agreement, proposed an additional provision not originally negotiated: the inclusion of a requirement reserving Sections 16 and 36 in each township in Gregory County "for the use of the common schools" and granting those

¹⁴ A school lands provision was also contained in the Act of March 3, 1891, 26 Stat. 989, 1035, extinguishing the Lake Traverse Reservation. At that time, of course, this Court had not held that a State would be entitled to school sections out of public lands by the force of its Enabling Act alone, and Congress therefore included an express grant even in Acts providing for purchase of lands for a sum certain.

sections to the State of South Dakota. S. Rep. No. 662, 57th Cong., 1st Sess. 1-2 (1902). The bill was passed in the Senate, but the House Committee on Indian Affairs rejected not only the provisions permitting free-homesteads but also the school lands provision, stating (H.R. Rep. No. 2099, 57th Cong., 1st Sess. 1 (1902)).

The opinion of the committee is that this section is *not necessary*, as under *existing law* sections 16 and 36 would be granted to the State upon the extinguishment of the Indian title. [Emphasis added.]

The bill never reached the House floor for a vote (Pet. App. 16, n. 23).¹⁵ When the Agreement for a sum certain was abandoned, however, subsequent bills included an express grant for school lands.

¹⁵ The 1901 Agreement was an outright cession of Gregory County for a sum certain, which the Tribe conceded below would have extinguished the reservation status of the land and restored it to the public domain (Pet. App. 16). See *DeCoteau v. District Court*, *supra*, 420 U.S. at 447-449. The House Indian Affairs Committee understood that, under such circumstances, it was *not* necessary expressly to reserve Sections 16 and 36 for school purposes because the South Dakota Enabling Act of 1889 provided that those sections would automatically revert to the State when Indian title was extinguished. See 25 Stat. 676, 679, Section 10. The Senate Committee Report, supporting inclusion of the provision, was issued in March 1902, *before* this Court's decision in *Minnesota v. Hitchcock*, *supra*. The House Report was issued on May 17, 1902, after the *Hitchcock* decision. Congress "must be deemed to have known" that the exact issue it was dealing with was resolved by this Court in *Hitchcock*. *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 113. It was the House Report that accurately reflected existing law.

The court of appeals mistakenly relied (Pet. App. 29) on statements made by Senator Gamble in 1902 in favor of a school lands

The question arose again in connection with the Act of 1910. Although the school lands provision was included in that Act without substantial debate, a similar provision in a bill to open lands in the Fort Berthold Reservation, North Dakota, was more fully discussed. The Fort Berthold bill, described as "practically in the same form" as the 1910 Rosebud Act (45 Cong. Rec. 5794 (1910)), provided for sales according to the uncertain-sum-in-trust method, except for Sections 16 and 36 which were to be purchased by the United States. After discussion of the school lands provision, Senator Jones of Washington stated (45 Cong. Rec. 6741 (1910)):

I think I am thoroughly familiar with the terms of these various bills, and I am satisfied that these lands are *not restored to the public domain at all*. Their disposition is provided for in a special way. *The title of the Indians is recognized, and the lands are sold for the Indians*. They are to have the benefit.

I am not going to object to the bill, and I am not going to object to the provisions in it, but I did want to put in the RECORD my judgment that we are under *no obligation to purchase section 16 and 36, because we are not restoring these surplus lands to the public domain*. [Emphasis added.]

provision without noting that others regarded the provision as unnecessary. The court then juxtaposed those statements with statements made in 1904 (Pet. App. 30) after the sum certain method of payment had been discarded. The latter statements in fact simply emphasize the need to include school lands provisions when the uncertain-sum-in-trust method of payment is used.

Senator Jones clearly recognized that the 1910 Fort Berthold Act, which was "practically in the same form" as the 1910 Rosebud Act, did not restore any lands to the public domain, and that Congress chose voluntarily to include a grant of school lands to provide schools in the opened territory.¹⁰ The Eighth Circuit has held that the 1910 Fort Berthold Act did not diminish the exterior boundary of that Reservation. *City of New Town, North Dakota v. United States*, 454 F. 2d 121. It is highly unlikely that Congress would have intended a different result in substantially identical legislation passed within the same month.

2. There is also no reason to believe that these lands, not restored to the public domain by Acts of Congress, were nevertheless restored by issuance of the Presidential proclamations opening the lands for settlement. At that point, the trust was still in full effect and the Indians had yet to receive any benefits under the particular Acts. Lands unsold or forfeited were to be restored to the Indians (presumably through the trust) and would not have been available for sale under the general laws. Thus they bear little resemblance to public lands.

This conclusion is fortified by *Ash Sheep Co. v. United States*, 252 U.S. 159. In 1899, the United States had negotiated an agreement with the Crow Tribe, by which the Tribe agreed to "cede, grant and

¹⁰ Since the opened areas were to be populated largely by white settlers, this action seems consistent with the purpose of the school lands provisions in the States' Enabling Acts.

relinquish" to the United States, for a lump sum, a portion of its reservation in Montana, 33 Stat. 352-356. In 1904, however, the Congress unilaterally "amended and modified" the unratified 1899 Agreement to include an uncertain-sum-in-trust provision, 33 Stat. 361 (Section 6), and a trusteeship provision, 33 Stat. 361 (Section 8), while retaining the "cede, grant, and relinquish" language of the 1899 Agreement. The land was opened by Presidential Proclamation in 1906, 34 Stat. (Part III) 3200, and "[m]uch thereof ha[d] been disposed of * * *." *United States v. Ash Sheep Co.*, unpublished opinion, Brief of the United States as Amicus Curiae in Support of Petition for Hearing and Rehearing en Banc, p. 66 (filed in the court of appeals).

In 1913, the Ash Sheep Company sought to graze sheep on unallotted lands opened for settlement without compliance with Interior Department regulations, claiming that the Act of 1904 had diminished the Reservation and converted the land affected into "public land." This Court disagreed, stating (252 U.S. at 165-166):

It is obvious that the relation thus established by the act between the Government and the tribe of Indians was essentially that of trustee and beneficiary and that the agreement contained many features appropriate to a trust agreement to sell lands and devote the proceeds to the interests of the *cestui que trust*. *Minnesota v. Hitchcock*, 185 U.S. 373, 394, 398. * * *

Taking all of the provisions of the agreement together we cannot doubt that while the Indians

by the agreement released their possessory right to the Government, the owner of the fee, so that, as their trustee, it could make perfect title to purchasers, nevertheless, until sales should be made any benefits which might be derived from the use of the lands would belong to the beneficiaries and not to the trustee, *and that they did not become "Public lands"* in the sense of being subject to sale, or other disposition, under the general land laws. *Union Pacific R.R. Co. v. Harris*, 215 U.S. 386, 388. They were subject to sale by the Government, to be sure, but in the manner and for the purposes provided for in the special agreement with the Indians, which was embodied in the Act of April 27, 1904, 33 Stat. 352 * * *. [Emphasis added.]

Thus, the Presidential Proclamation of 1906 clearly had not converted the Indian lands into public lands outside the Reservation.

Furthermore, a bill (S. 4632) to give settlers additional time to make payments on lands within various North and South Dakota Reservations (including the Rosebud) was introduced and considered in the Sixty Third Congress in 1914. 51 Cong. Rec. 8790 (1914). During the House debate of May 18, 1914, the consequences of non-payment by the settlers was discussed (51 Cong. Rec. 8791 (1914)):

Mr. FOSTER: I want to say to the gentleman from South Dakota, on the statement he makes that these lands will probably go back to the Government, and that these people are really in distress—

Mr. MANN: The Government does not own these lands?

Mr. BURKE of South Dakota: *The Government does not own them.* The Government is undertaking to dispose of these lands for the benefit of the Indians.

Mr. FOSTER: Certainly. I understand.

Mr. BURKE of South Dakota: *And instead of giving money to the Indians, under the agreement of 1889, so far as these reservations in South Dakota are concerned, the money goes into the Treasury, and we appropriate it for the support and civilization of the Indians.* [Emphasis added.]

The point was also emphasized later in the debate (*ibid.*):

Mr. FOSTER: * * * if at the end of the time they do not desire to pay for them, the land goes back to the Government.

Mr. MANN: *The land goes back to the Indians.* [Emphasis added.]

3. We believe that Congress expected by the Acts in question "to continue the reservation system and the trust status of Indian lands, but to allot tracts to individual Indians for agriculture and grazing. When all the lands had been allotted and the trust expired, the reservation could be abolished." *Mattz v. Arnett, supra*, 412 U.S. at 496. While it might have been possible to diminish the reservation *pro tanto* as each plot of land was actually sold, that system seems both illogical and impractical. Under such circumstances Indians could not be sure from day-to-day what lands remained within the Reservation (and thus on what lands they became subject to state jurisdiction, see

U.S. Department of Interior, *Federal Indian Law* 510-511 (1958)), and jurisdiction could only be exercised in checkerboard fashion according to local plat books. That cumbersome system should not be readily implied. *Seymour v. Superintendent, supra*, 368 U.S. at 358. Furthermore, the risk of forfeitures was always present given South Dakota's climate; the difficulties would only be increased as land, previously sold and removed from the Reservation, reverted to the trust upon nonpayment. Finally, the Indians living on the opened portion might be denied benefits available to Indians living on a Reservation.

By contrast, preserving the Reservation until the trust allotments expired would present fewer problems. The acquisition of land would not be impeded, for the settlers would own their land in the same manner and would be generally subject to state civil and criminal jurisdiction. *United States v. McBratnew*, 104 U.S. 621; *New York ex rel. Ray v. Martin*, 326 U.S. 496. The taxable base for the State and counties would be expanded, relieving the burdens of a locality previously inhabited largely by non-taxable Indians. At the same time, the Indians living on allotments would continue to receive needed federal benefits. While the State, of course, would not have jurisdiction over Indians on the Reservation, extension of State control over Indians has not generally been favored. *Rice v. Olson, supra*. This viewpoint is also consistent with treatment of the Reservation by the Department of the Interior, as we next discuss.

III. THE DEPARTMENT OF THE INTERIOR HAS ADMINISTERED
THE ROSEBUD RESERVATION IN ACCORDANCE WITH THE
BOUNDARIES ESTABLISHED IN 1889

Although the State of South Dakota has asserted dominion over the opened portions of the Rosebud Reservation, the territory within the original boundaries of 1889 has been recognized and administered as a Reservation by the Department of the Interior.

1. The process of alienating "surplus" Indian lands pursuant to the allotment policy ended with the passage of the Indian Reorganization Act of 1934 (48 Stat. 984). *Mattz v. Arnett, supra*, 412 U.S. at 496, n. 18. Under Section 3 of that Act, the Secretary of the Interior was authorized "to restore to tribal ownership the remaining surplus lands of any Indian Reservation heretofore opened * * *," 48 Stat. 984, and under Section 7, he was authorized to proclaim "new Indian reservations * * * or to add such lands to existing reservations." 48 Stat. 985. Congress made clear, however, that "[n]othing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads *upon the public domain outside the geographic boundaries* of any Indian reservation now existing or established hereafter" (48 Stat. 986; Section 8) (emphasis added).

The legislative history of the Act establishes that its provisions were directed particularly to "opened" portions of reservations. John Collier, Commissioner of Indian Affairs, whose agency was largely responsible for drafting the original bills, testified:¹⁷

¹⁷ Hearings on S. 2755 before the Senate Committee on Indian Affairs, 73d Cong., 2d Sess. 18 (1934).

There have been presented to the House Indian Committee numerous land maps showing the condition of Indian-owned lands on allotted reservations. The Indian-owned lands are parcels belonging (a) to allottees and (b) to the heirs of deceased allottees. Both these classes of Indian-owned land are checker-boarded with white-owned land already lost to the Indians, and on many reservations the Indian-owned parcels are mere islands within a sea of white-owned property.

Before the House Committee Commissioner Collier testified¹⁸:

* * * Alienation under allotment takes place in a spotty way *throughout the entire area within the reservation*. Indian land is not lost in solid blocks. It passed into white hands in scattered parcels which increased year by year until the remaining Indian lands are checker-boarded by white lands. *In many areas they have shrunk to mere dots on the map surrounded by large areas of white land.*

After passage of the Indian Reorganization Act of 1934 the unexpired trust period on all land allotted to Indians within reservations was indefinitely extended. The Secretary of the Interior was required to identify those Acts that "opened" portions of Indian Reservations but did not convert those lands into "public domain" (54 I.D. 559). The Secretary noted that many reservation lands had been ceded for a sum certain and concluded that "[t]he lands thereby separated

¹⁸ Hearings on H.R. 7902 before the House Committee on Indian Affairs, 73d Cong., 2d Sess. 30-31 (1934) (emphasis added).

from a reservation were no longer looked upon as being a part of that reservation" (54 I.D. at 560.) However, the Secretary determined that a second type of disposition did not extinguish the Indian title and convert the land into public domain (*ibid.*):

* * * [A]bout 1890 * * * there was adopted the plan of opening to entry, sale, etc., the lands of reservations that were not needed for allotment, the Government taking over the lands only as trustee for the Indians. Under this plan the Indians were to be credited with the proceeds only as the lands were sold, the United States not to be bound to purchase any portion of the lands so opened. Undisposed of lands of this class remain the property of the Indians until disposed of as provided by law (*Ash Sheep Company v. United States*, 252 U.S. 159). Such lands are usually referred to as surplus lands of Indian reservations opened to public entry, and undoubtedly comprise the class of lands from which restorations to tribal ownership are to be made under the said Section 3, if in the public interest.¹⁹

¹⁹ Respondents' discussion of a 1938 opinion by the Acting Solicitor (56 I.D. 330), concerning the Colorado Ute Reservation. Reply Brief for Respondents' in Opposition, pp. 26-27, takes an opposite viewpoint, relying on language that "[t]he phrase 'of any Indian reservation' must be used in section 3 to describe the character and location of the lands at the time they were opened to disposal under the public land laws," 56 I.D. at 333. No mention is made, however, of the language in Section 8 that "[n]othing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside the geographic boundaries of any Indian reservation now existing or established hereafter." That qualification, read in conjunction with Section 3, indicates that the only lands governed by the

The Secretary then proceeded to identify "a list of Indians to receive the proceeds of sale only as the reservations where the lands have been opened, the tracts are disposed of" (54 I.D. at 561).²⁰ In addition to the three Rosebud Acts of 1904, 1907 and 1910 (*id.* at 562), the Secretary listed some twenty-six other reservations.²¹ While those reservations have been the source of continual litigation, not one court has ever held that the Indian title to the land affected was extinguished by the applicable Act of Congress and the

Indian Reorganization Act were lands located within an Indian reservation that were opened but not restored to the public domain. Such lands, as the Court held in *Seymour and Mattz*, were not removed from Indian and federal jurisdiction.

Moreover, the lands at issue in the Colorado Ute case did not contain any Indian allotments. Three bands of Utes occupied this Reservation prior to 1880; each was permitted to select allotments within the Reservation before it was opened by the 1880 Act, but because little arable land was available, the Uncompahgre and White River Utes were "voluntarily" removed to Utah. The Southern Utes were the only band to remain, and they selected allotments in the southern portion of the Reservation where the arable lands were located, *Ute Indians v. United States*, 45 Ct. Cl. 440, 449, leaving the northern portion unallotted. The discussion by the Acting Solicitor, therefore, must be read in the context of these unusual facts. See also *Confederated Bands of Ute Indians v. United States*, 100 Ct. Cl. 413, 423, 424-430.

²⁰ Approximately one month later, a supplemental order was issued which included additional reservations. It stated that (*id.* at 564) "as to those townsites any part of which remains unsold within such areas, it is hereby recommended that said order * * * be construed to apply to the extent of temporarily withholding from other disposition any unsold lots or portions of any such townsites * * *."

Thus, even townships, which by the 1930's would be populated by numerous non-Indians, were encompassed by this Interior Department order.

²¹ See cases cited, note 10, *supra*.

land converted to public domain. In fact, when the question presented was whether the reservation boundaries continued to exist undiminished in size, each court decided that they had.

On December 3, 1937, the Assistant Commissioner of Indian Affairs recommended to the Secretary of the Interior that, pursuant to Section 3 and Section 7 of the Indian Reorganization Act, certain undisposed surplus lands "of the Rosebud Reservation, South Dakota" should be restored to tribal ownership.²² (App. A, *infra*). These lands included vacant

²² The Secretary had previously approved the Constitution and Bylaws of the Rosebud Sioux Tribe (App. B, *infra*), pursuant to Section 16 (48 Stat. 987) of the Indian Reorganization Act. That section provides that "[a]ny Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and by-laws * * *." Article 1 of the Constitution defined the Tribe's jurisdiction as "the territory within the original confines of the Rosebud Reservation boundaries as established by the act of March 2, 1889, and to such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law." The Rosebud Sioux Tribe has had a law and order system since 1877, supported by Congressional appropriations. 19 Stat. 254, 257 (Art. 9). Its police force was organized in 1879, *Report of Commissioner of Indian Affairs*, 1879, p. 40, and the extensive nature of its law and order system was recognized by this Court in *Ex parte Crow Dog*, 109 U.S. 556. See also *Report of Commissioner of Indian Affairs*, 1881, p. 54. Congress authorized the establishment of Tribal Courts in 1888, 25 Stat. 233, and the Rosebud law and order system continued to function thereafter. *Report of Commissioner of Indian Affairs*, 1897, p. 277 and *Report of Commissioner of Indian Affairs*, 1890, p. 381. After the approval of the Tribal Constitution in 1935, the Tribal Government was reorganized, and the Tribe has continued to exercise jurisdiction throughout the 1889 Reservation over Tribal members. See App. C, *infra*.

lands totaling some 4,649.25 acres, and also "remaining vacant and undisposed * * * lots within the townsites of Wamblee, Witten and Wewela, in the opened portion of the said Rosebud Reservation, which townsites were established by the Department, pursuant to authority contained in the Act of March 2, 1907, *supra*." *Id.* at 2A. The lands encompassed by this recommendation were in Tripp County, opened by the 1907 Act. On January 12, 1938, the Secretary issued an "Order of Restoration," restoring these lands to the Tribe (App. D, *infra*).²³

2. Other actions confirm this view of the Rosebud Reservation as administered by the Department of the Interior. Department officials have repeatedly treated lands within Mellette, Tripp, Gregory and Lyman Counties, located within the 1889 Reservation boundaries, as reservation lands. This treatment belies the viewpoint of the court of appeals that Todd County alone has constituted the Rosebud Reservation since 1910.

For example, in 1909, the Department, not having sold portions of the surplus lands made available by the 1904 Act to homesteaders, offered the re-

²³ On August 20, 1964, the Congress placed in trust status certain federal lands "on the Rosebud-Sioux Reservation," which included tract E. 1/2 of Section 35, T. 42 N., R. 33 W, 6th P.M. in Mellette County. 78 Stat. 560.

Restoration orders, comparable to the 1938 Rosebud Order, were issued for the Colville Reservation, pursuant to a Congressional directive, 70 Stat. 626 (1956), *Seymour v. Superintendent, supra*, 368 U.S. at 356, and the Klamath River Reservation, *Mattz v. Arnett*, 412 U.S. at 496, n. 17 and 505.

mainder for sale at public auction. In a letter dated February 8, 1909, to the Commissioner of the General Land Office, the Secretary stated (37 I.D. 442-443):

It is directed that *all that part of the Rosebud Indian reservation in Gregory County, South Dakota*, opened to settlement and entry by the act of April 23, 1904 (33 Stat. 254), which had not been entered prior to August 8, 1908, will be offered for sale * * *. [Emphasis added.]

The Department used similar language in 1913, directing sale of the lands opened by the 1907 Act:

Sir: It is directed that all that *part of the Rosebud Indian Reservation in Tripp County, South Dakota*, opened to settlement and entry by the act of March 2, 1907 (34 Stat. 1230), which had not been disposed of on April 1, 1913, will be offered for sale at public auction * * * [42 I.D. 292].

Communications between Department officials are to the same effect. In April 1913, the Acting Commissioner of Indian Affairs, C. F. Hauke, submitted to the Superintendent of the Rosebud School a request for a report on the possible consequences of reorganizing the administrative structure of the Reservation. C.A. App. IV, Doc. 41.²⁴ Replying to the request, the Superintendent discussed, among other things, the status of Indian allotments in the various districts (or counties) opened for settlement. He stated (App. IV, Doc. 42, p. 4):

These two Districts [Little White River and Black Pipe (both in Mellette County)] are the

²⁴ As used in this brief, "C.A. App." refers to the appendix filed in the court of appeals.

most troublesome of any of the Districts *on the Reservation*. The Bad Lands are located largely in these Districts which makes it difficult to go from place to place on account of the bad roads. The Cut Meat District [Todd County] has about 1,332 allotments with 299,120 acres, and a few over 1,000 Indians to look after. While it seems to be a large District, still there is but very little leasing of our Indian lands or allotments, *it being in the closed portion of our Reservation*, and the allotments are more compact with small farms in the District. The Agency has some over 1,200 Indians to look after, and is one of the largest Districts, but the farmer is assisted materially by being located in the Agency. [Emphasis added.]²⁵

That same year, the Supervisor of Industries and Agriculture for the Rosebud Reservation submitted a report to the Indian Office in Washington, D.C., regarding his inspection of portions of the Reservation. He stated (C.A. App. IV, Doc. 44, pp. 1-2):

The reservation is divided into farmers' districts, and I believe an honest effort is being made to induce the Indians to farm; * * * In the *Ponca District* [Gregory and Tripp counties] *at the east end of the reservation* there is a Teacher in Charge residing at the Milk's Camp Day School. His duties are exactly the same as those of the additional farmers.

²⁵ This correspondence shows that the distinction between "closed" and "opened" portions of the Reservation is that non-Indians were formally permitted by Congress to enter the Reservation in one portion (*i.e.*, "opened") while not others (*i.e.*, "closed"). Both parts, however, were administered as the Rosebud Reservation.

Practically all of the day school teachers have been raising good gardens for a considerable time. * * * Except in the *Ponca District* [Gregory and Tripp counties] *at the east end of the reservation*, which is a farming district, I do not consider the Rosebud country a farming country. [Emphasis added.]

Moreover, the Report of May 13, 1914, from the Supervisor at Rosebud to the Honorable Cato Sells, Commissioner of Indian Affairs (App. IV, Doc. 51, p. 3), states:

The [Rosebud] *reservation* is divided into seven farmer districts, each presided over by a farmer paid at a rate of \$900 per annum, except the *Ponca district* [Gregory and Tripp counties] in the *extreme eastern end of the reservation*, which is presided over by a teacher-in-charge at \$1000 per annum. [Emphasis added.]

Thus, the contemporaneous view of the Department officials was that the reservation boundaries were not changed by the Acts of 1904, 1907 and 1910.

More recently, in 1939, the Division of Forestry and Grazing of the Rosebud Reservation forwarded to the Commissioner of Indian Affairs a "map of the Rosebud Indian Reservation showing different types of roads" and identifying important landmarks regarding the location of the roads (*e.g.*, schools, fire look-out stations) (App. E, *infra*). The letter identifies roads and trails constructed by either the County or the Indian Service in Mellette, Tripp, Lyman and Gregory Counties; the location of new schools in Black Pipe (Mellette); the location of fire

look-out tower sites in Cedar Butte (Mellette); and the construction of government and private telephone lines in Mellette and Tripp Counties. These facilities all were considered part of the Reservation.

In 1942, the Interior Department's Fish and Wildlife Service undertook a wildlife survey on the Reservation in order to assist the Tribe in managing their resources (App. F, *infra*). The Report on the survey was completed in August 1942 and transmitted to the Commissioner of Indian Affairs in September. The Report contains this description of the Rosebud Reservation (*id.* at 39A-40A):

The *entire reservation* is included in Tripp, Gregory, Mellette, and Todd Counties, and covers a gross area of 3,555,833 acres. Alienated white lands total 2,468,888 acres of this area. Most of the field work was conducted on the *so called* "Diminished Reservation" in Todd County. This area, including alienated land, totals approximately 894,080 acres. Much of this is checkerboarded although there are some large solid blocks of Indian land. The largest percentage of the diminished reservation is Indian owned. Approximately 7,000 Indians are enrolled in the tribe. [Emphasis added.]

The Bureau of Indian Affairs continued, prior to this law suit, to administer all five counties as part of the Rosebud Reservation. From 1969 through 1974 requests for Congressional appropriations were based on population statistics which included all Indians living within the exterior boundaries of the 1889 Reservation, and clearly distinguished those from a

lesser number living off, but near the Reservation.²⁶ Various social services were provided to Indians living in all these counties, including child welfare and burial assistance; a BIA outpatient clinic is located in Mellette and Tripp Counties; and housing was provided by BIA or Tribal funding since 1963. Moreover, the Department of Housing and Urban Development, which makes grants only where a tribe has authority to act as a "governmental entity" or "public body" (42 U.S.C. 1460(h)), has been providing financial assistance to the Tribe (Memorandum of the United States as Amicus Curiae supporting petition for certiorari, p. 11). See also Opinion of the Field Solicitor on the exterior boundaries of the Rosebud Reservation in 1972 (C.A. App. IV, Doc. 56).

The agency responsible for administering the Rosebud Reservation, therefore, has generally regarded the original reservation boundaries as unchanged by the Acts of 1904, 1907, 1910. That understanding is entitled to more weight than it was accorded by the court of appeals, *Mattz v. Arnett*, *supra*, 412 U.S. at 505, and, we believe, is more instructive than the ambiguous legislative history discussed in the following section.

IV. THE LEGISLATIVE HISTORY SHOWS THAT CONGRESS DID NOT CONSIDER QUESTIONS OF JURISDICTION AND IS THEREFORE OF MARGINAL BENEFIT IN THIS CASE

The court of appeals gave primary, if not conclusive, weight to the legislative history of the three

²⁶ See App. A, Brief of the United States as Amicus Curiae in the court of appeals below.

Acts (Pet. App. 9-60).²⁷ While legislative history may be useful in these inquiries, *DeCoteau*, *supra*, 420 U.S. at 444-445, we do not believe the history in this case merits the emphasis it enjoyed below. For Congress, in passing these three Acts, at no time addressed the question of jurisdiction. Page after page of the legislative history shows that Congress was concerned with *land* not *jurisdiction*. Thus, that history is at best a slender reed on which to support extinction of most of the Rosebud Reservation.

During the early 1900's there was no reason for Congress to be greatly concerned about jurisdiction. The principal reason for opening the Rosebud Reservation, as the court of appeals recognized (Pet. App. 9, 34, 44), was the desire of settlers for land. This desire was compatible with the interests of States having great reservations within their boundaries, who sought a broader tax base through increased land ownership by non-Indians (*e.g.*, A. 276). Both objectives could be accomplished either by purchase for a lump sum or by purchase through the uncertain-sum-in-trust method. At the same time, the Indians would be exposed to new, presumably more civilized, ideas that would hasten their assimilation into our culture. As that assimilation occurred, and the trust period on allotted lands gradually expired, the Reservations could be abolished. *Mattz*, *supra*, 412 U.S. at 496.

²⁷ A law journal article, written in part by present counsel for South Dakota, had previously reviewed the legislative history in some detail and urged the result reached below. Comment, *New Town et al.: The Future of an Illusion*, 18 S.D. L. Rev. 85 (1973).

The debates reflect Congress' lack of attention to jurisdictional matters. Throughout the consideration of these three Acts, Congress discussed the desirability of the lands, the method of payment, the price to be paid by settlers, the need for school lands provisions, and many other matters, but not once addressed the issue of criminal and civil jurisdiction within the opened Reservation.²⁸ Although the court of appeals relied on scattered remarks that suggest abolition of the Reservation, these remarks are necessarily taken from discussions on different subjects and are often contradicted by other references of a similar nature. While exhaustive citation is not necessary, a brief review of materials not cited by the courts of appeals should demonstrate the uncertainty surrounding the legislative history in this case.

1. The view of the legislative history taken by the court of appeals proceeds from the assumption that the Acts of 1904, 1907, and 1910 were extensions of the unratified 1901 Agreement (Pet. App. 22, 23, 25,

²⁸ Jurisdiction is mentioned, albeit tangentially, in the debate on the liquor provision in the 1910 Act. That provision made all land in Mellette County subject to the liquor laws applicable in "Indian Country." Although the courts below suggested that the provision would be unnecessary if the Reservation were continued (Pet. App. 56-58, 102-103), that suggestion is erroneous. As the debates show, 45 Cong. Rec. 5460-5464 (1910), members of Congress were fully aware of this Court's decision in *In re Heff*, 197 U.S. 488, holding that Indian allottees were subject to state liquor laws. While opponents of the provision believed that state jurisdiction was sufficient, supporters noted that dependency on state liquor laws presented a grave risk to Indian well-being (45 Cong. Rec. 5460-5464 (1910)). Thus federal control was expressly continued for twenty-five years, the trust period on Indian allotments, at which time abolition of the Reservation could be considered.

38, 40, 48). Although we agree that the 1901 Agreement and the three Acts had a common purpose of providing Indian lands to white settlers, the differences between them merit further attention.

In 1901, the Rosebud Sioux Tribe agreed by a three-fourths majority of the adult male population to "cede, surrender, grant, and convey to the United States all their claim, right, title, and interest" in all that part of the Reservation located in Gregory County, South Dakota, remaining unallotted, in return for a lump sum payment of \$1,040,000 (Pet. App. 14 and 15, n. 21). This agreement, which was negotiated by the Interior Department's Inspector, James McLaughlin, was to be effective "when accepted and ratified by the Congress of the United States" (*id.* at 15).²⁹ That ratification of course never occurred.

Three years later, after several previous bills had failed to pass, a new bill was introduced which unilaterally "amended and modified" the 1901 Agreement. The primary amendments were that (1) the Indians were not guaranteed a lump sum consideration, except for Sections 16 and 36 (school sections), but were to be paid as lands were actually sold (Section 6, Pet. App. 120); (2) the United States did not guarantee to find purchasers but agreed only to "act as trustee for said Indians to dispose of said lands" (Section 6, Pet. App. 120); and (3) limitations were placed on the distribution of the proceeds to the In-

²⁹ Approval of three fourths of all the adult male Indians, before an agreement was considered valid, was required by the Treaty of 1868, 15 Stat. 635, 639 (Art. XII) (Pet. App. 14, n. 20).

dians (compare Art. III, Pet. App. 118 with Art. III, Pet. App. 115-116). In addition, the 1904 bill eliminated any reference to tribal consent by three-quarters of the male adults, and included a provision granting Sections 16 and 36 to the State for common school purposes (Section 4, Pet App. 120). It was enacted on April 23, 1904, 33 Stat. 254.³⁰

Although the court of appeals stated that "[t]he 1904 Act, incorporating the entire text of the 1901 Agreement (save for the lump-sum provision) passed under the circumstances [previously discussed], was obviously an outgrowth of and a continuation of the objectives of the 1901 Agreement" (Pet. App. 25), that conclusion, while technically correct, is misleading. The 1901 Agreement itself does not evidence a specific intention to cut down reservation boundaries; at most, that intention could be presumed from the bilateral nature of the agreement and by the provisions for outright purchase of the lands for an indicated sum. *DeCoteau, supra*. That presumption is unavailing, however, once the nature of the agreement and the method of payment are changed. The objective of securing new lands for non-Indian settlers surely was continued, but that is not material to the question of jurisdiction over the settled lands.

2. The court of appeals also proceeded on the assumption that the terms "reservation" and "diminished reservation" had one settled, precise meaning

³⁰ Despite these numerous and material changes the court of appeals somehow concluded that the 1904 Act "amended the 1901 Agreement solely with respect to the method of payment" (Pet. App. 23).

throughout the legislative history. Thus, the court relied heavily on various references to the "reservation" and the "diminished reservation" (Pet. App. 12, 13, 14, 26-28, 39, 40-41, 44, 45, 51-52, 54, 57, 58, 59) to show that the exterior boundaries of the Rosebud Reservation had been cut back. Consideration of similar references in the legislative history, however, indicates that the terms were often used in shorthand fashion without the precision that the court of appeals supposed.

For example, the term "diminished reservation," as used in the 1910 Act, appears to include not only Todd County (the closed portion) but also Mellette County (the portion to be opened). The May 30, 1910 Rosebud Act provides in part, 36 Stat. 449 (Section 1):

[A]ny Indians to whom *allotments* have been made *on the tract to be ceded* [Mellette County] may, in case they elect to do so *before* said lands are offered for sale, relinquish same and select allotments in lieu thereof on the *diminished reservation* * * *. [Emphasis added.]

Section 2 of the Act, however, directs the Secretary to dispose of the unallotted lands in Mellette County after a presidential proclamation, provided (*ibid*):

That prior to said proclamation the *allotments within the portion* of the said Rosebud Reservation *to be disposed of* [Mellette County] as prescribed herein shall have been completed * * *. [Emphasis added.]

Since the Indians could select new allotments in Mellette County prior to the presidential proclamation, as well as in Todd County, "diminished reserva-

tion" seems to refer not merely to the closed portion of the Reservation but to the "area of the reservation * * * diminished in size by reason of the settlement of the unallotted lands by non-Indians." *Putnam v. United States*, 248 F. 2d 292, 295 (C.A. 8). In *United States ex rel. Condon v. Erickson*, 478 F. 2d 684, 687 (C.A. 8), the court of appeals recognized that a similar use of the term could mean that "the reservation * * * retained its original exterior boundaries even though the portion held by Indians was diminished by virtue of the sale of lands within the boundaries to outsiders." The court then continued: "Indeed, this would be consistent with 18 U.S.C. § 1151 defining Indian Country as lands within the limits of a reservation notwithstanding the issuance of any patent" (*ibid.*; emphasis in original).³¹

³¹ In a November 12, 1910, letter regarding the 1910 Act, the Assistant Commissioner of Indian Affairs stated (C.A. App. IV, Doc. 40B):

"The diminished reservation,—that is, the lands remaining after the allotments [to Indians] and sale of lands [to homesteaders] referred to, will consist of about 40 townships, which may be used to provide allotments until such time as there are no unallotted lands therein." [Emphasis added.]

In 1910 Mellette County consisted of 837,125 acres (36 full townships) and a number of irregularly sized townships. Thousands of these acres had already been allotted to Indians prior to the opening, and could not "be used to provide allotments * * *" after the opening. To find "about 40 townships" available for allotment, therefore, it would be necessary go beyond Mellette County.

In 1911, a few months after Mellette County was opened to settlement, there existed in Todd County less than 220,000 acres that could "be used to provide allotments * * *" to Indians, S. Rep. No. 1166, 62d Cong., 3d Sess. 4 (1913), the remainder having long since been allotted or reserved for agency and school purposes. The remaining 700,000 acres referred to by the Assistant

At other times, "diminished reservation" seems to mean only the closed portion of the Reservation. The Report prepared by the Fish and Wildlife Service in 1942 (App. F, *infra*, at 39A), for example, states that "[t]he entire [Rosebud] reservation is included in Tripp, Gregory, Mellette, and Todd Counties," and notes that "[m]ost of the field work was conducted on the so called 'Diminished Reservation' in Todd County." This is the same portion of the Reservation that the Superintendent of Rosebud School described as "the closed portion of our Reservation * * *" (*supra*, p. 35).

Construction of the term "reservation" also leads in various directions. While some references to the Rosebud "reservation" appear compatible with the court of appeals' analysis, other references do not. Thus, within a year after the 1904 Act was passed, the homesteaders in Gregory County petitioned Congress for an extension of time to establish their residence upon lands opened to settlement. The Senate and House Committee Reports both refer to the lands in question as "lands within the confines of that part of the Rosebud Indian Reservation thrown open to entry * * *" (emphasis added). H.R. Rep. No. 4198, 58th Cong., 3d Sess. (1905); S. Rep. No. 2760, 58th Cong., 3d Sess. (1905) And, after describing the need for the legislation in light of bad climatic conditions

Commissioner appears to have been an estimate from existing Department records of the land remaining throughout the entire 1889 Reservation for the purpose of allotment, "diminished" by the lands already allotted to Indians or occupied by homesteaders.

causing delays in payments by homesteaders, the Senate Committee Report states (*id.* at 2):

A further fact which influences the committee in making a favorable report is that these settlers are under conditions different to those affecting the ordinary homestead settler. Entry-men on the reservations in question have to pay \$4 an acre in the case of the Rosebud Reservation * * *.

This legislation became law on February 7, 1905, 33 Stat. 700.

On March 3, 1909, Congress enacted an appropriation for the Indian Department for the fiscal year ending June 30, 1910. 35 Stat. 781. Under Section II of the Act, Congress made appropriations for reservations within various states, including South Dakota. 35 Stat. 808. Additionally, Congress authorized the Secretary to permit the establishment of catholic missions "on the Rosebud Reservation." 35 Stat. 809. The missions were to be located as follows (*ibid.*):

*On the Rosebud Reservation, at or near Saint Francis Mission * * *; also, at or near Red Leaf Camp * * *; also, at or near Oak Creek * * *; also, at or near Antelope Creek * * *; also, at or near Little White River * * *; also, at or near Ponca Creek. [Emphasis added.]*

Ponca Creek is located in Gregory County, opened by the Act of 1904.

In 1911 Congress had before it a bill for relief of settlers in the area opened by the Act of 1907. Representative Stephens, who called up the bill, described it as a "bill (H.R. 13044) extending the time of pay-

ment to certain homesteaders in the Rosebud and other Indian reservations in South and North Dakota * * *" (47 Cong. Rec. 3840 (1911)) and then stated (*id.* at 3841):

Mr. Speaker, we have gone at some length into the question of the great drought-stricken country of the West in the bill which has already passed the House and we have shown the House beyond all question that a severe drought has extended all over the West, including South Dakota. *The Rosebud Reservation, where these lands are situated, is now, in the main, in the hands of settlers * * *. [Emphasis added.]*

The bill became law on April 17, 1911, 37 Stat. 21.

In 1918, Mr. Gandy, a representative from South Dakota, introduced a bill (H.R. 12082) "authorizing the sale of certain lands in South Dakota for cemetery purposes." 56 Cong. Rec. 6469 (1918). The bill was referred to the Committee on Indian Affairs, which reported (H.R. Rep. No. 742, 65th Cong., 2d Sess. 1 (1918)):

This is a bill to authorize the sale of 10 acres of tribal land *on Rosebud Indian Reservation in Mellette County S. Dak., and belonging to the Rosebud Tribe of Indians, to the White River Cemetery Co. * * ** It is provided that the Secretary of the Interior shall sell the land * * * and that the money received shall be deposited in the Treasury of the United States to the credit of the Rosebud Tribe of Indians. [Emphasis added.]

In the following year, during debate on a bill to pay for fire damages on the Todd County portion of the Rosebud Reservation, 58 Cong. Rec. 4933 (1919),

Mr. Gandy observed that "[t]he Rosebud Reservation embraces about 7,000 square miles." However, Todd County, which the Eighth Circuit found to be the *only* portion of the original Rosebud Reservation remaining in 1919, is less than 1,500 square miles (approximately 800,000 acres). The 1889 Rosebud Reservation, undiminished in size, is in excess of 5,000 square miles (3,228,160 acres).

In December 1940, the Town of White River, located in Mellette County, South Dakota, sought approval from the Federal Power Commission for construction of an electric power line across Indian lands. The FPC notified the Town that if "tribal Indian lands are to be crossed * * * prior approval of the proper reservation authorities" was required (App. G, *infra*, p. 41A). The FPC then notified the Secretary of the Interior that the "Town of White River, South Dakota, has filed with the Commission an application for license * * * affecting lands of the United States within the Rosebud Indian Reservation" (App. G, *infra*, p. 42A.) Thus, both the Town of White River and the FPC acknowledged that power line construction in Mellette County would affect lands within the Reservation and was subject to approval of "reservation authorities."

In June, 1941, the United States filed a Declaration of Taking in the United States District Court for the District of South Dakota, in order to acquire land "for the use of the United States of America, * * * in connection *with the Two Kettle Project on the Rosebud Indian Reservation* in South Dakota * * *" (App. H, *infra*, pp. 44A, 50A) (emphasis

added.) The lands acquired were described by the District Court as (*id.* at 50A)

* * * containing 610.10 acres of land, more or less, *in Mellette County*, South Dakota, designated as Tract No. 189 of the *Two Kettle Project on the Rosebud Indian Reservation* [Emphasis added.]

The District Court entered its Findings of Fact and Conclusions of Law, as well as its final judgment, on December 12, 1941 (*id.* at 44A).

In 1945 Senator Bushfield, a Senator from South Dakota, introduced a bill (S. 1564) directing the Secretary of the Interior to issue a fee patent to Shadrick Ponca, a Rosebud Sioux Indian. The relevant Committee Report stated (S. Rep. No. 1442, 79th Cong., 2d Sess. 1 (1946)):

Shadrick Ponca, is the sole heir of his deceased mother, Millie or Wing Ponca, who bequeathed to him her allotted lands *on the Rosebud Indian Reservation, S. Dak., described in this bill, which lands are situated in Gregory County, S. Dak.,* a distance of more than 50 miles from applicant's home in the village of Okreek, in Todd County, S. Dak., where applicant, Shadrick Ponca, lives in his own home * * *.³²

Two years later, Senator Bushfield asked the Commissioner of Indian Affairs for a report on the application of Charlotte Gordon Odden for a patent in

³² The bill was passed by the Senate on June 14, 1946, 92 Cong. Rec. 6920, introduced into the House, 92 Cong. Rec. 7120, and referred to the House Committee on Indian Affairs. 92 Cong. Rec. 7399-7400. There was no further action during the 79th Congress, and although the South Dakota Senator introduced it again in the 80th Congress, 93 Cong. Rec. 3219 (1947), it did not become law.

fee covering her allotment in Tripp County, South Dakota. The Commissioner stated in his letter of August 21, 1947 (App. I, *infra*):

Receipt is acknowledged of your letter of August 11 about Mrs. Charlotte Gordon Odden's application for a patent in fee covering her 160-acre allotment, No. 4248, *on the Rosebud Reservation, described as the SW 1/4 sec. 11, T. 96N., R. 74W., 5th P.M., Tripp County, South Dakota.* [Emphasis added.]

The inconsistency in these references is not surprising in view of the fact, discussed previously, that Congress did not squarely face the question of jurisdiction over the opened lands; other more controversial matters claimed its attention. It is inappropriate, therefore, to select certain statements from the mass of ambiguous materials and draw inferences from these, as the courts below did.³³ Read in its

³³ We also think the court of appeals misapprehended the significance of the fact that non-Indians and Indians live within the Reservation and utilize State and Federal facilities or benefits. Neither fact is inconsistent with the continued existence of the Rosebud Reservation. Only 19% of the Flathead Tribe live within the Flathead Reservation in Montana, *Confederated Salish and Kootenai Tribes v. Namen*, 380 F. Supp. 452, 457, n. 5 (D. Mont.), and considerable expenditures by both the State and Federal governments within the area provide benefits to all residents. *Confederated Salish and Kootenai Tribes v. Moe*, 392 F. Supp. 1297, 1313-1314 (D. Mont.). Similarly, the entire City of Tacoma, Washington, is within an Indian Reservation (Brief of the United States as Amicus Curiae in Support of Petition for Rehearing and Rehearing en Banc, p. 95 (filed in court of appeals); see also *United States v. Washington*, 496 F. 2d 620 (C.A. 9), certiorari

entirety, the legislative history does not show a clear intent to cut back the Reservation boundaries.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals for the Eighth Circuit should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER R. TAFT,
Assistant Attorney General.

H. BARTOW FARR,
Assistant to the Solicitor General.

EDMUND B. CLARK,

NEIL T. PROTO,

Attorneys.

SEPTEMBER 1976.

denied, 419 U.S. 1032), and this Court recognized the presence of non-Indians within the Colville Reservation. *Seymour v. Superintendent, supra*, 368 U.S. at 358-359. This pattern represents nothing more than the logical consequence of Acts "opening" Indian reservations to white settlement around the turn of the century.

APPENDIX A

DECEMBER 3, 1937.

The Honorable, the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office).

MY DEAR MR. SECRETARY: There are transmitted herewith the files of this Office relative to the proposed restoration to tribal ownership of all lands which are now, or may hereafter be, classified as undisposed-of surplus opened lands of the Rosebud Reservation, South Dakota.

Section 3 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), provides, in part, that:

"The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act.

Section 7 of that Act provides, in part, that:

"The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations.

By Presidential proclamations of May 13, 1904 (33 Stat. 2534), August 24, 1908 (35 Stat. 2203), and

June 29, 1911 (37 Stat. 1691), under authority contained in the acts of Congress approved April 23, 1904 (33 Stat. 254), March 2, 1907 (34 Stat. 1230), and May 30, 1910 (36 Stat. 448), respectively, all lands within the Rosebud Reservation, with the exception of Todd County, were opened to settlement and entry under the provisions of the homestead and townsite laws of the United States, and of the said acts of Congress.

The Commissioner of the General Land Office has submitted a schedule from which it appears that there are at the present time remaining vacant and undisposed of, approximately 4,649.25 acres of such lands. It is possible that the said vacant area will increase to a small extent due to relinquishments and cancellations which may affect homestead entries that have not yet been completed.

A detailed report submitted from the field shows that all of the vacant surplus lands are of such a character and so located that they would be of no value for the purpose of homestead entry, and are primarily valuable for use in connection with Indian grazing activities only. Some of the tracts are now within or adjacent to established Indian grazing Units and other tracts may later be included in such units.

There are also remaining vacant and undisposed of a number of lots within the townsites of Wamblee, Witten and Wewela, in the opened portion of the said Rosebud Reservation, which townsites were established by the Department, pursuant to authority contained in the Act of March 2, 1907, *supra*.

The townsite of Wamblee originally embraced the NW/4 of Section 34, Twp. 102 N., R. 74 W., 5th P.M., South Dakota. Under date of March 31, 1917, the Secretary of the Interior approved the recom-

mendations of this Office, whereby Departmental order of February 8, 1909, reserving the above described tract for townsite purposes, was modified and amended so as to exclude from such reservation all that portion of the said tract designated as Blocks 1 to 5, 12 to 20, 29 to 36 and 45 to 52, inclusive, together with the intervening streets and alleys. The tract so excluded is more particularly described in the recommendation approved March 31, 1917, *supra*, and was set aside for administrative purposes as a farm station under the Rosebud Indian Agency.

The Superintendent of the Rosebud Reservation reports that Wamblee, now known as Hamill, South Dakota, is far from being a prosperous town; that its streets are unpaved; that it has no municipal lighting, water facilities, etc., and that at least six vacant blocks within this townsite are adjacent to and could be used in connection with the above mentioned farm station. The Superintendent further states that if these lots were restored to the tribe that it might prove of benefit to the tribe and to the community of Indians in using this land to settle and to provide homes for those without land or other property, as the location is within a rather well settled Indian community. Information furnished by the Commissioner of the General Land Office indicates that the vacant lots in this townsite are with few exceptions located in a contiguous body adjacent to the farm station, as above stated.

The townsite of Witten embraces the N/2 of Sec. 21, Twp. 100 N., R. 78 W., 5th P.M., South Dakota. From information furnished by the Commissioner of the General Land Office it appears that a great number of lots within the townsite remain unsold and that in several instances there are a number of entire blocks vacant and in a fairly compact body. The

Superintendent of the reservation states that this town is at present practically abandoned; that on building a railroad into this part of the country the location was laid out approximately two miles south of the townsite and that a new town by the same name sprang in the NW/4 of Sec. 33 of the same township. It is further stated that all permanent business, new homes, and improvements are on the new location. The Superintendent recommends that most of the blocks that have not been sold might well be put to use in resettling landless Indians in this locality.

The townsite of Wewela embraces the SW/4 of Sec. 25, Twp. 95 N., R. 76 W., 5th P.M., South Dakota. Information furnished by the General Land Office shows that a large proportion of the area of the townsite remains vacant and unsold. The report of the Superintendent states that this also is a small country town without municipal improvements; that a number of Indian families live in the vicinity; that the use of unsold town blocks and lots by Indians would undoubtedly help the Indian situation in this locality, in relieving the use of public funds for their support, and that it would increase the size of the community and naturally somewhat the business of the town.

Both the Tribal Council and the Superintendent of the Rosebud Agency have given consideration to the disposition to be made of the vacant, opened lands of the reservation, including unsold lots in the townsites above named, and have recommended that they be restored to the tribe. This Office concurs in the said recommendations.

There is transmitted herewith a draft of an order, so drawn as to provide for the permanent restoration of tribal ownership, for the use and benefit of the

Rosebud Sioux Tribe of Indians of the Rosebud Indian Reservation in the State of South Dakota, of all lands which are now or may hereafter be, classified as undisposed-of, surplus, opened lands of the Rosebud Indian Reservation, together with all unsold lots in the townsites of Wambleo, Witten and Wewala, and that the said vacant lands be added to and made a part of the existing reservation, subject to any valid existing rights. It is respectfully recommended that the matter be given favorable consideration.

Sincerely yours,

(Signed) WILLIAM ZIMMERMAN, Jr.,

Assistant Commissioner.

7-OL-6

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE
Washington, D.C.

DEC. 27, 1937.

There are no reasons appearing in the records of this Office why the foregoing recommendation should not be approved.

(Signed) D. K. PARROTT,

Acting Assistant Commissioner.

DEPARTMENT OF THE INTERIOR
Washington, D.C.

JAN. 12, 1938.

JAN. 12, 1938.

APPROVED By

(Signed) HAROLD L. ICKES,

Secretary of the Interior, and all papers
returned to the Bureau.

APPENDIX B

CONSTITUTION AND BYLAWS OF THE ROSE- BUD SIOUX TRIBE OF SOUTH DAKOTA

PREAMBLE

Under and by virtue of our Creator and His divine providence, we the enrolled members of the Rosebud Sioux Tribe of Indians of the Rosebud Indian Reservation in the State of South Dakota, in order to establish a united tribal organization, to establish justice, to insure tranquility and enjoy the blessings of freedom and liberty, to conserve our tribal property, to develop our common resources, and to promote the best welfare of the present generation and our posterity, in education and industry, do hereby adopt and establish this constitution and by-laws.

ARTICLE I—TERRITORY

The jurisdiction of the Rosebud Sioux Tribe of Indians shall extend to the territory within the original confines of the Rosebud Reservation boundaries as established by the act of March 2, 1889, and to such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

ARTICLE II—MEMBERSHIP

SECTION 1. Membership of the Rosebud Sioux Tribe shall consist as follows:

(6A)

7A

(a) All persons of Indian blood, including persons born since December 31, 1920, whose names appear on the official census roll of the tribe as of April 1, 1935.

(b) All children born to any member of the Rosebud Sioux Tribe who is a resident of the reservation at the time of the birth of said children.

SEC. 2. The Tribal Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members.

ARTICLE III—GOVERNING BODY

SECTION 1. The governing body of the Rosebud Sioux Tribe shall consist of a council known as the Rosebud Sioux Tribal Council.

SEC. 2. The council shall be elected for a term of two years, by secret ballot. Each community of the reservation, as follows, shall be entitled to representation on the tribal council, according to population, as hereinafter provided:

- | | |
|--------------------|--------------------|
| 1. Ringthunder | 12. Two Strike |
| 2. Spring Creek | 13. Parmelee |
| 2. He Dog | 14. Upper Cut Meat |
| 4. Black Pipe | 15. Corn Creek |
| 5. Swift Bear | 16. Horse Creek |
| 6. Butte Creek | 17. White Thunder |
| 7. Bad Nation | 18. Little Crow |
| 8. Okreek | 19. Ideal |
| 9. Bull Creek | 20. Ponca |
| 10. St. Francis | 21. Upper Ponca |
| 11. Brass Mountain | 22. Soldier Creek |

SEC. 3. The tribal council shall have authority to make changes in the foregoing list according to future

community needs, subject to the approval of the Secretary of the Interior.

SEC. 4. Each recognized community shall elect representatives to the tribal council, in the proportion of one representative for each two hundred fifty (250) members or a remainder of more than one hundred twenty-five (125), provided that each recognized community shall be entitled to at least one representative.

SEC. 5. No person shall be a candidate for membership in the tribal or community council unless he shall be a resident member of the Rosebud Sioux Tribe and shall have been affiliated for a period of one year next preceding the election, with the community of his candidacy.

SEC. 6. Each community shall have power, by popular vote, to fill any vacancy which may occur in its representation on the tribal council.

SEC. 7. The Rosebud Sioux Council may elect from within or without its number a president, a vice-president, a secretary, a treasurer, and a sergeant-at-arms, and such other officers as it may from time to time desire.

SEC. 8. The Rosebud Sioux Tribal Council shall be the sole judge of the constitutional qualifications of its own members.

SEC. 9. The first election of councilmen under this constitution shall be held on call of the present council, within thirty (30) days after its ratification and approval. Prior to the first election of the tribal council the membership of each community shall be determined by the superintendent and a committee consisting of one delegate from each community herein designated. Thereafter, the membership of the various communities shall be determined by the communities, subject to review by the tribal council.

SEC. 10. Elections for the tribal council shall thereafter be called not less than thirty (30) days prior to the expiration of the term of office of the members of the council.

ARTICLE IV—POWERS OF THE ROSEBUD SIOUX TRIBAL COUNCIL

SECTION 1. *Enumerated powers.*—The council of the Rosebud Sioux Tribe shall exercise the following powers, subject to any limitations imposed by the statutes of the Constitution of the United States or of the State of South Dakota, and subject further to all express restrictions upon such powers contained in this constitution and attached by-laws.

(a) To negotiate with the Federal, State, and local Governments on behalf of the tribe and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Rosebud Sioux Reservation.

(b) To employ legal council for the protection and advancement of the rights of the tribe and its members, the choice of council and filing of fees to be subject to the approval of the Secretary of the Interior.

(c) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands, interests in lands or other tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other qualified official or agency of Government: *Provided*, that no reservation lands shall ever be leased for a period exceeding five years, sold or encumbered, except for governmental purposes.

(d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission

of such estimates to the Bureau of the Budget and to Congress.

(e) To make assignments of tribal land to members of the tribe in conformity with article VIII of this constitution.

(f) To manage all economic affairs and enterprises of the tribe in accordance with the terms of a charter which may be issued to the tribe by the Secretary of the Interior.

(g) To appropriate for public purposes of the Rosebud Sioux Tribe available tribal council funds, and subject to review by the Secretary of the Interior, any other available tribal funds.

(h) To levy taxes upon members of the tribe and to require the performance of reservation labor in lieu thereof, and to levy taxes or license fees, subject to review by the Secretary of the Interior, upon non-members doing business within the reservation.

(i) To exclude from the restricted lands of the reservation persons not legally entitled to reside therein, under ordinances which shall be subject to review by the Secretary of the Interior.

(j) To enact resolutions or ordinances not inconsistent with article II of this constitution governing the adoption and abandonment of membership.

(k) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the tribe, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.

(l) To purchase lands of members of the tribe for public purposes, under condemnation proceedings in courts of competent jurisdiction.

(m) To safeguard and promote the peace, safety, morals, and general welfare of the tribe by regulating the conduct of trade and the use and disposition of property upon the reservation, provided that any ordinance directly affecting non-members of the tribe shall be subject to review by the Secretary of the Interior, and provided further that non-restricted property of members which was obtained without any help or assistance of the Government or the tribe may be disposed of without restrictions.

(n) To charter subordinate organization for economic purposes and to regulate the activities of all cooperative associations of members of the tribe.

(o) To regulate the inheritance of property, real and personal, other than allotted lands, within the territory of the reservation, subject to review by the Secretary of the Interior.

(p) To regulate the domestic relations of members of the tribe.

(q) To provide for the appointment of guardians for minors and mental incompetents by ordinance or resolution subject to review by the Secretary of the Interior.

(r) To exchange and foster the arts, crafts, traditions, and culture of the Sioux.

(s) To regulate the manner of making nominations and holding elections for tribal offices.

(t) To adopt resolutions regulating the procedure of the council itself and of other tribal agencies and tribal officials.

(u) To delegate to subordinate boards or tribal officials, to the several communities, or to cooperative associations which are open to all members of the tribe any of the foregoing powers, reserving the right to

review any action taken by virtue of such delegated power.

SEC. 2. *Manner of review.*—Any resolution or ordinance which, by the terms of this constitution, is subject to review by the Secretary of the Interior, shall be presented to the superintendent of the reservation, who shall, within ten (10) days hereafter, approve or disapprove the same.

If the superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may, within ninety (90) days from date of enactment, rescind the said ordinance or resolution for any cause, by notifying the reservation council of such decision.

If the superintendent shall refuse to approve any resolution or ordinance submitted to him, within ten (10) days after its enactment, he shall advise the Rosebud Sioux Council of his reasons therefor. If these reasons appear to the council insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may, within ninety (90) days from the date of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

SEC. 3. *Future Powers.*—The tribal council may exercise such further powers as may in the future be delegated to the tribe by the Secretary of the Interior, or by any duly authorized official or agency of the State or Federal Government.

SEC. 4. *Reserved powers.*—Any rights and powers heretofore vested in the Rosebud Sioux Tribe but not expressly referred to in this constitution shall not be abridged by this article, but may be exercised by the

people of the Rosebud Sioux Tribe through the adoption of appropriate bylaws and constitutional amendments.

ARTICLE V—COMMUNITY ORGANIZATION

Each community established under this constitution shall elect, annually, a president and such other officers as may be advisable. The president shall call and preside over popular meetings of the community whenever necessary for the consideration of matters of local interest. The various communities may consult with representatives of the Interior Department on all matters of local interest and make recommendations thereon to the tribal council or the superintendent or Commissioner of Indian Affairs, may undertake and manage local enterprises for the benefit of the community, may levy assessments upon members of the community, may expend moneys in the community treasury for the benefit of the community, may keep a roll of those members of the tribe affiliated with the community, and may exercise such further powers as may be delegated to the communities by the tribal council. The actions of the community councils shall not be inconsistent with the constitution, by-laws, and ordinances of the tribe.

ARTICLE VI—ELECTIONS

SECTION. 1. The individuals qualified to vote from and after approval of this constitution and by-laws shall be any adult enrolled Rosebud Sioux who has maintained a residence for ninety (90) days prior to the election on the Rosebud Indian Reservation.

SEC. 2. The council or boards appointed by it shall have power to certify to the election of any member

and this should be done within five (5) days after the election.

ARTICLE VII—REMOVAL FROM OFFICE

SECTION 1. Any member of the tribal council who is convicted of a felony or of any other offense involving dishonesty during his term of office shall automatically forfeit his office.

SEC. 2. The tribal council may, by a two-thirds vote, expel any member for neglect of duty or gross misconduct, after due notice of charges and an opportunity to be heard.

ARTICLE VIII—LAND

SECTION 1. Allotted lands, including heirship lands, within the Rosebud Reservation shall continue to be held as heretofore by their present owners. It is recognized that under existing law such lands may be condemned for public purposes, such as roads, public buildings, or other public improvements, upon payment of adequate compensation, by any agency of the State of South Dakota or of the Federal Government, or by the tribe itself. It is further recognized that under existing law such lands may be inherited by the heirs of the present owner, whether or not they are members of the Rosebud Sioux Tribe. Likewise it is recognized that under existing law the Secretary of the Interior may, in his discretion, remove restrictions upon such land, upon application by the Indian owner, whereupon the land will become subject to State taxes and may then be mortgaged or sold. The right of the individual Indian to hold or to lose his land, as under existing law, shall not be abrogated by anything contained in this constitution, but the owner

of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey his land to the Rosebud Sioux Tribe either in exchange for a money payment or in exchange for an assignment covering the same land or other land, as hereinafter provided.

SEC. 2. Tribal lands of the Rosebud Reservation and all lands which may hereafter be acquired by the Rosebud Tribe or by the United States in trust for the Rosebud Tribe shall be held as tribal lands, and no part of such lands shall be mortgaged or sold.

SEC. 3. Tribal lands shall not be allotted to individual Indians, but such tribal lands as are not required for school, agency, or other administrative use may be assigned by the tribal council to members of the Rosebud Tribe or may be leased or otherwise used by the tribe as hereinafter provided for.

SEC. 4. Tribal lands may be leased by the tribal council with the approval of the Secretary of the Interior in accordance with law. Preference shall be given, first, to Indian cooperative associations, and, secondly, to individual Indians who are members of the Rosebud Tribe. No lease of tribal lands to a non-member shall be made by the tribal council unless it shall appear that no Indian cooperative association or individual member of the tribe is able and willing to use the land and to pay a reasonable fee for such use; provided, no individual member of the tribe or cooperative association shall be given any preference as to the use of tribal land unless the stock of such individual member or association is restricted stock and bears the ID brand.

SEC. 5. In any assignment of tribal lands, preference shall be given to heads of families which are entirely landless. Assignments under this section shall be known as "home assignments" and shall be granted

for the purpose of giving opportunity to homeless Indians for establishing a home. Any assignment under this provision shall not exceed ten (10) acres in area.

SEC. 6. If any person holding a "home assignment" of land shall for a period of six months fail to use the land so assigned or shall use the land for any unlawful purpose, his assignment may be cancelled by the tribal council after due notice and opportunity to be heard. Such land may then be available for reassignment.

Upon the death of any Indian holding a "home assignment" his heirs or other individuals designated by him by will or written request shall have preference in the reassignment of the land, provided such persons are eligible to receive a "home assignment."

SEC. 7. Any member of the Rosebud Tribe who owns an allotment of land or any share in heirship land or any deeded land, may, with the approval of the Secretary of the Interior, voluntarily transfer his interest in such land, including or excluding mineral rights therein, to the tribe and receive therefor an assignment in the same land or other land of equal value or he may receive a proportionate share in a unit of grazing land.

Assignments made under this section shall be known as "exchange assignments."

SEC. 8. A member receiving an "exchange assignment" shall receive the right to lease such assigned lands or interests under the same terms as governing the leasing of allotments.

SEC. 9. Upon the death of a holder of an "exchange assignment", such lands shall be reassigned by the tribal council to his heirs or devisees, subject to the following conditions:

(a) Such lands may not be reassigned to any heir or devisee who is not a member of the Rosebud Tribe,

except that a life assignment may be made to the surviving spouse or child of the holder of such assignment.

(b) Such lands may not be reassigned to any heir or devisee who already holds more than 640 acres of grazing land or other lands of equal value.

(c) Such lands may not be subdivided into units too small for practical use. No area of grazing land shall be subdivided into units smaller than one hundred sixty (160) acres. No area of agricultural land shall be subdivided into smaller units than two and one-half (2½) acres. When interests in assignments shall involve smaller areas than the amounts herein set out, the tribal council may issue to such heir or devisee a proportionate share in other grazing units or other interests in land of equal value.

(d) If there are no eligible heirs or devisees of the decedent, the land shall be eligible for reassignment the same as other tribal lands.

SEC. 10. Improvements of any character made upon assigned land may be willed to and inherited by members of the Rosebud Tribe. When improvements are not possible of fair division, the tribal council shall dispose of them under such regulations as it may provide. No permanent improvements may be removed from any tribal or assigned land without the consent of the tribal council.

SEC. 11. No member of the Rosebud Tribe may use or occupy tribal lands except under assignment or lease.

SEC. 12. Unassigned land shall be managed by the tribal council for the benefit of the members of the entire tribe.

SEC. 13. Tribal funds may be used, with the consent of the Secretary of the Interior, to acquire land for the Rosebud Tribe.

SEC. 14. Applications for assignments of land shall be made in writing. Such applications shall be submitted to the council at regular or special sessions. The application will be placed in the hands of a proper committee who will call the matter up for action at the next regular meeting of the council. Any member of the tribe may object, in writing, to a proposed assignment. In the event of objection, the chairman of the council shall set a date for a hearing, advising both the applicant and the objector. The action of the council shall be final.

The secretary of the council shall furnish the superintendent or other officer in charge of the agency a complete record of all action taken by the council on applications for assignment of land, and a complete record of assignments shall be kept in the agency office and shall be open for inspection by members of the tribe.

The council shall draw up one or more forms for standard and exchange assignments, which shall be subject to the approval of the Secretary of the Interior.

ARTICLE IX—AMENDMENTS

This constitution and by-laws may be amended by a majority vote of the qualified voters of the Rosebud Sioux Tribe voting at an election called for that purpose by the Secretary of the Interior provided that at least thirty (30) per cent of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment, upon receipt of a written resolution signed by at least three-fourths ($\frac{3}{4}$) of the membership of the council.

BYLAWS OF THE ROSEBUD SIOUX TRIBE OF SOUTH DAKOTA

ARTICLE I—DUTIES OF OFFICERS

SECTION 1. It shall be the duty of the president to preside over all meetings of the Rosebud Sioux Tribal Council and carry out all orders of the council. He shall vote only in case of a tie.

SEC. 2. The vice-president shall assist the president when called upon to do so, and, in the absence of the president, he shall preside. When so presiding, he shall have all the rights, privileges, duties, as well as the responsibilities, of the president.

SEC. 3. The council secretary shall keep a full report of all proceedings of each regular and special meeting of the tribal council and shall perform such other duties of like nature as the council shall from time to time by resolution provide, and shall transmit copies of the minutes of each meeting to the council, to the superintendent of the reservation, and to the Commissioner of Indian Affairs.

SEC. 4. The council treasurer shall be the custodian of all moneys which come under the jurisdiction or in control of the Rosebud Sioux Tribal Council. He shall pay out money in accordance with the orders and resolutions of the council. He shall keep account of all receipts and disbursements and shall report the same to the council at each regular meeting. He shall be bonded in such an amount as the council by resolution shall provide, such bond to be satisfactory to the Commissioner of Indian Affairs. The books of the council treasurer shall be subject to audit or inspection at the discretion of the council or of the Commissioner.

ARTICLE II—DUTIES OF COUNCILMEN

It shall be the duty of each member of the tribal council to make reports to the community from which he was elected concerning the proceedings of the tribal council.

ARTICLE III—OATH OF OFFICE

Each member of the tribal council and each officer or subordinate officer, elected or appointed hereunder shall take an oath of office prior to assuming the duties thereof; by which oath, he shall pledge himself to support and defend the Constitution of the United States and this constitution and by-laws. (Oath): I, _____, do hereby solemnly swear that I will support and defend the Constitution of the United States against all enemies, will carry out, faithfully, and impartially, the duties of my office to the best of my ability; and will cooperate, promote and protect the best interests of my tribe, the Rosebud Sioux, in accordance with this constitution and by-laws.

ARTICLE IV—SALARIES

SECTION 1. The tribal council may prescribe such salaries of tribal officers, employees, or member of the council as it deems advisable from such funds as may be available.

SEC. 2. No compensation shall be paid to any councilman, president, vice-president, secretary, treasurer, tribal council, or any officer out of the tribal funds under the control of the Federal Government, except upon a resolution stating the amount of compensation and the nature of services rendered, and said resolution shall be of no effect until approved by the Secretary of the Interior.

ARTICLE V—MEETINGS OF COUNCIL

SECTION 1. Regular meetings of the council shall be four (4) in each year, and shall be held in January, April, July, and October, on such days in said months and at such places at the council by resolution shall provide. Two-thirds ($\frac{2}{3}$) of the duly elected members must be present to constitute a quorum. Special meetings may be called by the president, the superintendent of the reservation, or by a majority of the councilmen in writing, and when so called, two-thirds ($\frac{2}{3}$) of said councilmen must be present to constitute a quorum and the council shall have power to transact business as in regular meetings.

SEC. 2. A designated room or place shall be set aside for the tribal council, where all records and tribal council property shall be kept.

ARTICLE VI—SIOUX COUNCILS

The tribal council shall have the power to select delegates to sit in National Sioux Councils.

ARTICLE VII—ADOPTION OF CONSTITUTION AND BY LAWS

This constitution and by laws, when ratified by a majority of the qualified voters of the Rosebud Sioux Tribe voting at a special election called for the purpose by the Secretary of the Interior, provided that at least 30 percent of those entitled to vote shall vote in such election, shall be submitted to the Secretary of the Interior, and, if approved, shall be effective from date of approval.

CERTIFICATION OF ADOPTION

Pursuant to an order, approved November 1, 1935, by the Secretary of the Interior, the attached consti-

tution and by-laws were submitted for ratification to the members of the Rosebud Sioux Tribe of the Rosebud Reservation and were on November 23, 1935, duly approved by a vote of 992 for and 643 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (Public, No. 147, 74th Cong.).

GEORGE KILLS IN SIGHT,
Chairman of Election Board.

GEORGE WHIRLWIND SOLDIER,
Vice Chairman of Rosebud Sioux Tribal Council
WALLACE A. MURRAY,

Secretary of Rosebud Sioux Tribal Council.

W. O. ROBERTS,
Superintendent.

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached constitution and by-laws of the Rosebud Sioux Tribe.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said constitution and by-laws are hereby declared inapplicable to the Rosebud Sioux Tribe.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said constitution and by-laws.

Approval recommended December 16, 1935.

JOHN COLLIER,
Commissioner of Indian Affairs.

HAROLD L. ICKES,
Secretary of the Interior.

[SEAL]

WASHINGTON, D.C., December 20, 1935.

APPENDIX C

The documents in this Appendix are examples of the continuing exercise of jurisdiction by the Rosebud Tribe throughout the Reservation. See note 22, *supra*.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, FIELD SERVICE,
ROSEBUD INDIAN AGENCY,
Rosebud, South Dakota, April 21, 1941.

Mr. WILLARD W. BEATTY,
Director of Education, Office of Indian Affairs,
Washington, D.C.

DEAR MR. BEATTY: I am enclosing herewith copy of resolution relative to health education passed by the Rosebud tribal council at its last meeting. My thought is that you would be interested in this, especially since the movement has sprung from the Indians. Some weeks ago the health committee of the tribal council called at my office expressing the thought that the Indians themselves could do a great deal more than has been done if they would become more active in cooperating with the health program. Out of this discussion it was concluded to call a meeting of the doctors and nurses to discuss this thought in conference with the tribal health committee. At this meeting it was decided to invite the health committees from each one of the communities to a general meeting at the boarding school to feel out the sentiment of the people as to what should be done and what could be done.

From this general meeting at the boarding school there was evolved practically what is contained in this resolution. The health committee submitted the resolution to the council at a special meeting February 17.

The council members then took copies of this resolution with the understanding they would discuss the matter with the people of their communities. At the regular council meeting held April 1, the resolution was again brought to the floor and was adopted by a vote of 23 for and none against—5 not voting. It will be noted this resolution is based entirely upon the thought of educating the communities in stirring them to action; that in each paragraph some one is urged or requested or given an opportunity to do so and so, and that the thought of penalties is entirely absent.

Yours very truly,

C. R. WHITLOCK,
Superintendent.

Enclosure.

RESOLUTION (EXCERPTS)

Whereas, Doctor Frazier has retired from the Indian Service, and

Whereas, this leaves the Milk's Camp Community[*] without medical aid, and

Whereas, it has been requested by the Milk's Camp Community that the Rosebud Sioux Tribal Council recommend that they be given a Field Nurse, therefore

Be it Resolved, by the Rosebud Sioux Tribal Council in council assembled this 9th day of April, 1941, that the above request of the Milk's Camp Community be given a favorable consideration.

Be it Further Resolved, that the council recommend that a Field Nurse be stationed in the vacancy of Doctor Frazier at an earliest date possible.

Sgd. CLEMENT VALANDRA,

Sgd. EMMET EAGLE BEAR,

Sgd. ANTOINE ROUBIDEAUX,

Resolution Committee.

*Milk's Camp is in Gregory County.

MOTION

Upon motion duly made by Jack Williams and seconded by Joe Henry, members of the council, the above foregoing resolution was duly adopted by the Rosebud Sioux Tribal Council by a vote of 23 for, none against, and 5 not voting.

This certifies that the above is a true and correct copy of resolution duly adopted by the Rosebud Sioux Tribal Council in regular session held at the Rosebud Indian Agency, Rosebud, South Dakota, April 9, 1941.

THOMAS F. WHITING,

President, Rosebud Sioux Tribal Council.

Attest:

THOMAS A. FLOOD,

Secretary, Rosebud Sioux Tribal Council.

Date: 4/15/41

Approved:

C. R. WHITLOCK,

*Supt., Rosebud Indian Agency, Rosebud,
South Dakota.*

Date:

TRIBAL COUNCIL, OCTOBER 27, 1958

MINUTES

"Approval appointment of Community Police"
Motion made by Mr. Wellman Collins to authorize appointment of Mr. Henry Shield and Mr. Jasper Peneaux for Community Tribal Police. Motion seconded by Mr. Wilbur Blacksmith. Motion carried, 19 for and none opposed.

"Claim of \$20.00".—Mr. Leo Menard submitted a claim for \$20.00 for the use of his trailer for moving and transporting materials from Rosebud to the fair grounds during the Rosebud fair. Motion made by Mr. Leo Running Horse to authorize payment of the claim. Motion seconded by Mr. Joe Stands. Motion carried, 19 for and none opposed.

"Request of Ideal Community".[*]—A request was submitted by the people of Ideal Community for lumber to fix up benches for their meeting hall, also, if possible to have the tribal truck delivery drinking water to the cistern which was setup for this community. The Chairman advised that he will write a letter to the community about this request.

"\$500,000.00 Loan".—The Chairman informed the Council Body that the necessary documents have been prepared in connection with the \$500,000.00 loan. In connection, a resolution will be needed to complete the loan transaction. Motion made by Mr. Antoine Roubideaux to authorize the Officers of the Tribal Council to draft such resolution and put into effect and the President and Secretary certify the resolution. The motion seconded by Mr. Wilbur Blacksmith. Motion carried, 15 for, none opposed, 5 not voting.

"Sub-Charter".—The Chairman requested that someone or committee be authorized to draft a Bylaws for Sub-Charter for management of the tribal cattle herd. Motion was made by Mr. Antoine Roubideaux to authorize the Chairman to appoint any number of committee from members of the Council or Officers for the purpose of drafting a Bylaws for Sub-Charter. Motion seconded by Mr. Wilbur Blacksmith. Motion carried, 19 for and none opposed.

"Request for Lumber".—Mr. Leo Menard, member of the Housing Committee of the Tribal Council, re-

*The Ideal Community is in Tripp County.

quested that some lumber be released from the horse and dairy barns at the Boarding school for distribution among the most needy families of the reservation. The Chairman advised that he will hold a meeting with the committee for this purpose.

"Adjournment".—Motion made by Mr. Gus Knox to adjourn meeting. The motion seconded by Mr. Antoine Roubideaux. Motion carried unanimously.

Done on this 27th day of October 1958, at Rosebud, South Dakota by the Tribal Council.

Antoine Roubideaux
ANTOINE ROUBIDEAUX,
Secretary, Rosebud Sioux Tribal Council

MINUTES, ROSEBUD SIOUX TRIBAL COUNCIL,
ROSEBUD, SOUTH DAKOTA, JULY 9, 1963

The Rosebud Sioux Tribal Council met in regular session in the Tribal Administration Building, Rosebud, South Dakota. The meeting was called to order at 1:20 p.m., on Tuesday, July 9, 1963, by Mr. Cato W. Valandra, President. Mr. Sam Bear opened the meeting with prayer.

Roll call for quorum was taken by the Secretary and all twenty-two (22) members of the Council were present.

Cato W. Valandra	Asa Long Warrior
Adam Bordeaux	John Burnette
Antoine Roubideaux	George Brave
Opie LaPointe	Robert Moran
Paul Cloudman	Homer Whirlwind Soldier
Henry Horse Looking	Gus Knox
Charles Kills In Water	Lloyd Winter Chaser
Robert Kills Plenty	William Long Crow
Stephen Spotted Tail	Sam White Horse
Isaac Iron Shell	Joe Stars
Leo Running Horse	
Sam Bear	

Also Present: Thomas Bone Shirt, Sergeant-At-Arms
 Robert Burnette
 Dr. E. E. Bayse
 Dr. Charles Allen
 Dr. Bertrum Rogers

Dr. E. E. Bayse, Medical Officer in Charge, Rosebud Hospital, came before the Council with Dr. Charles Allen and Dr. Bertrum Rogers and introduced them to the Council. Dr. Allen and Dr. Rogers are new doctors at the Rosebud Hospital. Dr. Bayse informed the Council of extra hours for clinic on Tuesday.

Mr. Robert Burnette, Executive Director, NCAI, suggested that the Council call upon the South Dakota delegation in Congress for the need of funds to provide public works on the reservation. He also suggested to continue the fight against state jurisdiction.

The following Resolution No. 6334 relating to conveyance of 18 acres of Tribal land to the Mellette County School District and the resolution was adopted by a vote of 16 for, none opposed, 5 not voting, on a motion made by Sam Bear and seconded by Sam White Horse.

WHEREAS, the Act of June 4, 1953, chap. 98, (67 Stat. 41) as amended, 25 U.S.C. 293 a, requires the consent of the Tribe to the conveyance of the interest of the United States in any land used for Indian school purposes subject to the conditions prescribed in the statute; and

WHEREAS, the Black Pipe School District No. 8 desires the transfer of 18.004 acres more or less for school purposes which 18.004 acres is a part of a reserve of 319.83 acres of tribal land set aside for the Black Pipe Issue Station and the Black Pipe Day School which reserve the Tribe has long sought to be restored to tribal status,

NOW, THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribe does hereby consent, subject to the conditions hereinafter specified, to the conveyance by the Secretary of the Interior, or his authorized representative, to the Black Pipe School District No. 8 of the following described property:

Commencing on the NE corner of section 3. T. 40 N., R. 33 W., 6th Principal Meridian, South Dakota; thence in a southerly direction on the east boundary line of said section 3, a distance of 1,765.00 ft., to an iron pin on centerline of road which marks the NE corner of the Norris School Ground Plot, thence continuing in a southerly direction on the east boundary line of said section 3, a distance of 190.8 ft., to an iron pin on centerline of road thence in a westerly direction paralleling the north boundary line of said section 3, a distance of 370.0 ft., to an iron pin, thence in a southerly direction paralleling the east boundary line of said section 3, a distance of 220.0 ft., to an iron pin, thence in an easterly direction paralleling the north boundary line of said section 3, a distance of 370.0 ft., to an iron pin on centerline of road, thence in a southerly direction on the east boundary line of said section 3, a distance of 204.2 ft., to a "1/2" inch bolt with wire attached on centerline of road, thence 1,407.6 ft., in a westerly direction paralleling the north boundary line of said section 3, to a 1 1/4 inch iron pipe sunk in the ground; thence 615.0 ft., in a northerly direction paralleling the east boundary line of said section 3 to a 3/4 inch galvanized pipe sunk in ground; thence 1,407.6 ft., in an easterly direction paralleling the north boundary line of said section 3 to an iron pipe on centerline of road which is the beginning point of the Norris School Ground Plot containing 18.004 acres, more or less, including all improvements and equipment thereon.

This consent is on condition as follows:

(1) that this consent and the conditions of this consent shall be incorporated in and made a part of the instrument of conveyance.

(2) That there is expressly reserved to the Tribe and excepted from the conveyance, all of the oil, gas, and other minerals and mineral rights of whatever nature or description in the lands, with the exclusive right to prospect, exploit, develop and operate without limitation or payment of damages.

(3) That the conveyance is on the express condition that, and so long as, (a) the premises are used for the purpose of maintaining a school and attendant school facilities and for no other purposes and (b) the facilities of the school are available to Indians on the same terms as they are available to non-Indians, except that no tuition or the equivalent of tuition shall ever be required from members of the Rosebud Sioux Tribe of school age, their parents or guardians.

(4) That before the conveyance to School District No. 8 is delivered to the school district, it shall be furnished to the Tribe for examination to insure that the conditions of this consent will be contained in the conveyance.

BE IT FURTHER RESOLVED, that this consent is given on assurance of the Bureau of Indian Affairs that prompt steps will be taken to transfer to the Tribe all of the 319.83 acres reserve less the 18.004 acres to be conveyed to School District No. 8.

BE IT FURTHER RESOLVED, that the President and Secretary are authorized to execute all necessary papers to carry out the purposes to this resolution.

Robert Moran, Councilman from Bad Nation Community, introduced the following resolution relating

to minimum rate per head on tribal land. The resolution was rejected by a vote of 14 against, 4 for, and 4 not voting. Mr. Moran moved for adoption of the resolution which was seconded by Opie LaPointe.

WHEREAS, the Community of Bad Nation feels that allotted land is leased at a high rate so in order to equalize the leasing rates, they feel that tribal land should be leased to Indian operators and loan clients at a rate of \$10.00 per head.

WHEREAS, they feel that this would help the Indian operators and loan clients to stay in business.

WHEREAS, tribal land program was set up to benefit the Indian people, so therefore the Community of Bad Nation goes on record with this resolution to help the Indian people in regulating their leasing expenses.

Chairman

Secretary

(S) AARON H. MORAN

(S) MONICA DILLON

Other Expenses of Law and Order:

Office supplies & equipment.....	\$ 1,000.00
Postage	50.00
Tax	600.00
Police Uniforms.....	500.00
Total	\$12,700.00

Mr. Lloyd Winter Chaser, Councilman from Ideal Community,¹ asked if the Tribe could station a tribal or Federal police officer in Ideal Community. The reason for the request is that the Tripp County Sheriff refused cooperation due to lack of state jurisdiction. The Tripp County Sheriff used to help enforce law now he refuses to help the community.

Both the Chairman and Superintendent advised that County Sheriffs on the reservation are commissioned by the Bureau of Indian Affairs as Federal Police

¹ Ideal Community is located in Tripp County.

Officers. They have jurisdiction to enforce laws on Indian land.

Mr. Gus Knox also stated that the Todd County Deputy Sheriff refused to patrol a road during a funeral.

The Chairman stated that he will inform the proper state officials concerning the attitude of the County Sheriffs.

The Superintendent stated that the Commission issued to the Sheriffs may have expired July 1, 1963. He said he would check to see if the Commissions are still in effect.

Mr. Long Crow stated that the Tripp County Sheriff will help us if we need him. (Mr. Long Crow is Councilman from Bull Creek Community.)

Mr. Joe Stars, Representative from Milk's Camp,² stated that the Gregory County Sheriff has been very cooperative.

Mr. George Brave, Representative from Horse Creek Community, suggested that the law and order budget should be increased for more tribal police.

Treasurer: The Law and Order operation is on a self-paying proposition. Their income will not allow an increase in the budget.

A budget for the Tribal Council operations for fiscal year 1964 was presented by the Treasurer and was approved by a vote of 20 for, none opposed, and 2 not voting on a motion made by Sam White Horse and seconded by Leo Running Horse.

² Milk's Camp is located in Gregory County.

APPENDIX D

JANUARY 12, 1938.

ORDER OF RESTORATION, ROSEBUD RESERVATION, SOUTH DAKOTA

WHEREAS, under authority contained in the acts of Congress approved April 23, 1904 (33 Stat. 254), March 2, 1907 (34 Stat. 1230), and May 30, 1910 (36 Stat. 448), providing for the disposal by the United States of large areas of land within the boundaries of the Rosebud Indian Reservation, State of South Dakota, said areas were opened to settlement and entry under the general provisions of the homestead and townsite laws of the United States and of the said acts of Congress by Presidential proclamations of May 13, 1904 (33 Stat. 2354), August 24, 1908 (35 Stat. 2203), and June 29, 1911 (37 Stat. 1691), respectively, and

WHEREAS, pursuant to authority contained in the act of March 2, 1907, supra, certain tracts of land within the opened portion of the reservation were set aside and reserved for the townsites of Wamblee, Witten, and Wewela, and

WHEREAS, there are now remaining undisposed of on the said opened portion of the Rosebud Reservation a number of tracts of surplus land, together with a large number of vacant lots within the above mentioned townsites which, while of little value for the original purpose of settlement and entry, upon thorough investigation have been found to be valuable to the Indians of the said reservation, and

WHEREAS, by relinquishment and cancellation of homestead entries a small additional area of land may be included within the class of undisposed-of surplus land, and

WHEREAS, the Tribal Council, the Superintendent of the Rosebud Indian Reservation, and the Commissioner of Indian Affairs have recommended restoration to tribal ownership of all such undisposed-of lands in the said reservation.

NOW, THEREFORE, by virtue of the authority vested in the Secretary of the Interior by Sections 3 and 7 of the act of June 18, 1934 (48 Stat. 984), I hereby find that restoration to tribal ownership of all lands which are now or may hereafter be, classified as undisposed-of, surplus, opened lands of the Rosebud Indian Reservation, together with all unsold lots in the townsites of Wamblee, Witten, and Wewela, will be in the public interest, and the said lands are hereby restored to tribal ownership for the use and benefit of the Rosebud Sioux Tribe of Indians of the Rosebud Indian Reservation in the State of South Dakota, and are added to and made a part of the existing reservation, subject to any valid existing rights.

(Signed) HAROLD L. ICKES,
Secretary of the Interior.

JANUARY 12, 1938.

APPENDIX E

DIVISION OF FORESTRY AND GRAZING,

ROSEBUD INDIAN AGENCY,

Rosebud, South Dakota, January 9, 1939.

COMMISSIONER OF INDIAN AFFAIRS,

Washington, D.C.

(Attention: L. D. Arnold.)

DEAR SIR: We are forwarding herewith map of the Rosebud Indian Reservation showing different types of roads for your consideration for printing. This is in compliance with your letter of September 27, 1939.

Some changes in location of high-ways and roads are shown. All pavement on US high-way #18 shown is laid or programmed to be laid during 1940-41. Pavement west of Jordan has not been laid but is programmed by the State High-way Department. This is also true of pavement between Colome and Herrick. Owing to the time these will be used after being printed we deem it advisable that paved road be shown as marked. The proposed location of US #183 has been shown as a dotted green line in Tripp County south of High-way #18.

We have marked all classes of roads and trails. For printing you will probably desire to show only such roads as are graded and maintained and such trails as connect with same to go through to a nearby improved road. We would like to have the fire trails shown if convenient. For use in the field it is best to have as many roads shown as is feasible.

Source material was secured as follows:

1. USIS Roads: from Road Department, Rosebud, S.D.

2. State High-way: from State High-way Department, Pierre, S.D.

3. Todd County: County roads from County Commissioners; trails from TCBIA Range Survey Maps, fire trails from CCC-ID.

4. Mellette County: Maintained roads from County Engineer, trails from same source. Trails had been taken from aerial maps.

5. Tripp County: from County Engineer, Winner, S.D.

6. Gregory County: from State High-way Department, Pierre, S.D.

7. Lyman County: from County Engineer, Kennebec, S.D.

In northeastern Mellette County the locations of two towns are changed. Brave is no longer a post office. The store has been moved to the location shown. The name of Runningville has been changed to Bad Nation and its location is one-half mile west of the point shown on the print. The new location is shown. In southeastern Mellette County there is a new town on the railroad called Mosher.

In southwestern Todd County, Caddy post office no longer exists. Littleburg is shown. There is a store, grade school and high school here.

In Gregory County, Mullen no longer exists, but two new localities, Lucas and Carlock, are shown.

Names of Day Schools where there are no structures or school is no longer held have been marked off. Locations of new schools are shown. New schools are located at Soldier Creek, Ring Thunder, Grass Mountain, Spring Creek, Okreek, Bad Nation, Black Pipe and Horse Creek. The name of Cutmeat Day School has been changed to He Dog. The Black Pipe Issue Station at Norris was shown incorrectly. It is the

NW/4 of sec. 2 and NE/4 of sec. 3, Twp. 40, Range 33. The Grass Mountain colony and the proposed new Boarding School Site are shown.

Four fire look-out tower sites are shown, one on Cedar Butte in Mellette County, and three in Todd County, one near Haystack Butte, and two at the North and South of the West Timber Reserve.

Government telephone lines have been constructed to the look-out towers, to connect with the Pine Ridge system, to Arnold's Ranch and to the following day schools: Spring Creek, Grass Mountain, He Dog, Soldier Creek, Ring Thunder, Black Pipe, and the Rosebud Boarding School. A government line also runs to St. Francis connecting with the nurses quarters and the Mission School. Another government line runs to Crookston, Nebraska, connecting with the automatic exchange there.

The A.T. & T.-Bell System lines are shown in Mellette, Todd and Tripp Counties. Farm lines are not shown. Their lines end at Mission where we make a connection to their exchange. There is no line running from Kary to Parmelee as shown on the present print.

Roads shown on the print which are not colored are no longer there.

Respectfully,

CHARLES R. PETELER,
Assistant Range Examiner.

Approved:

C. R. WHITLOCK,
Superintendent.

APPENDIX F

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
September 22, 1942.

Memorandum for the Commissioner of Indian Affairs.

Enclosed are four copies of a wildlife survey and management report on the Rosebud Indian Reservation, submitted by Assistant Biologist Carl Eklund in August 1942.

It is a pleasure to note the progress recently made on this Reservation by the Tribe, in enacting an unusually good wildlife ordinance, and by the Agency personnel, in improving the management of fur resources. I hope that further benefits can be realized as a result of Mr. Eklund's findings, and that the Reservation will avail itself of material aid from our LaCreek Refuge, as suggested in the report. Transplanting of muskrats from LaCreek to Rosebud should aid both areas, providing that adequate preparation is made at the latter by planting of aquatics as recommended. We will be glad to have Mr. Eklund work directly with the Reservation Superintendent on such matters.

CHAS. E. JACKSON,
Acting Director.

Enclosure 924.

WILDLIFE SURVEY AND MANAGEMENT REPORT ON THE
ROSEBUD INDIAN RESERVATION

Wildlife investigations on the Rosebud reservation in south-central South Dakota were carried on from

(38A)

April 26-May 14, and May 17-19, 1942. Purpose of the work was to survey the wildlife resources, suggest possible management practices, and help the Tribal Council set up game ordinances.

Field work was carried on with Range Examiner Vance A. Tribbett, and Assistant Indian Forester Raymond Reynolds. Conferences were held with Superintendent Claude R. Whitlock, the Rosebud Sioux Tribal Council, and various Indian Service officials.

Heaviest rains in South Dakota history, and a severe snowstorm, made roads impassable much of the time. This prevented considerable detailed survey work which it was hoped could have been carried on in connection with beaver studies.

The Tribal Council unanimously adopted the proposed game ordinances on May 19. Potentially, this is the finest set of ordinances yet adopted by any council in this region, and if enforced could make Rosebud one of the best game areas in the Great Plains region.

Previous reports on this reservation have been made by Mr. Clifford C. Presnall as of November 13, 1941 (Wildlife Report on Rosebud Indian Reservation), and by Mr. Charles L. Fuqua, Spearfish Hatchery Foreman, on October 24, 1934 (Report of Stream Inspection Trip to the Rosebud Indian Reservation).

DESCRIPTION

The entire reservation is included in Tripp, Gregory, Mellette, and Todd Counties, and covers a gross area of 3,555,833 acres. Alienated white lands total 2,468,888 acres of this area. Most of the field work was conducted on the so called "Diminished Reservation" in Todd County. This area, including alienated land, totals approximately 894,080 acres. Much of this is checkerboarded although there are some large solid

blocks of Indian land. The largest percentage of the diminished reservation is Indian owned. Approximately 7,000 Indians are enrolled in the tribe.

Soil is an important factor in the ecology of game animals, and in the Great Plains region it is probably a basic limiting factor in their distribution. Any management plan should give some thought to the soil types, with their resultant characteristic vegetation. The following four general types are found within the diminished reservation in Todd County:

I. Rosebud sandy soils group. This comprises about 70% of the county. Characterized by level to rolling land, is very productive as grassland, and has good average productivity under cultivation. Vegetation is the mixed prairie type short and tall grasses such as Western wheatgrass (*Agropyron smithii*), porcupine grass (*Stipa comata*), sandgrass (*Calamovilfa longifolia*), little bluestem (*Andropogon scoparius*), blue grama (*Bouteloua gracilis*), buffalo grass (*Buchloe dactyloides*), and a sedge, nigger-wool (*Carex filifolia*). This soil type would carry the heaviest pheasant population because here would be found the best farm crops.

II. Epping-Laurel series. Mostly silty and clay soils. Comprises about 15% of the total area. Characterized by short grasses and rolling to steeply rolling uplands. This is not considered good farm land. Predominant vegetation is blue grama, buffalo grass, wheatgrass, and nigger-wool.

III. Pierre-Boyd-Orman series. This is mostly clay soil characterized by fast surface runoff, slow under-drainage, undulating to hilly uplands, and short grasses. It comprises approximately 5% of the reservation and is not considered good farm land.

APPENDIX G

FEDERAL POWER COMMISSION,
Washington.

BP-P-South Dakota.

TOWN OF WHITE RIVER,

Mellette County, South Dakota.

(Attention Mr. L. L. King, President, Town Board of Trustees.)

GENTLEMEN: Reference is made to your letter of December 13, 1940, relative to the construction of an electric power line across Indian lands. It is noted that the energy to be transmitted would be used to operate a pumping plant in connection with the proposed installation of a water works system to serve the Town of White River.

If tribal Indian lands are to be crossed, you are advised that, subject to the prior approval of the proper reservation authorities, immediate construction and use of the line, at your risk, prior to the issuance of a license therefor, will not prejudice consideration by the Commission of an application for license provided that such application shall be filed within ninety days from the date of this letter.

There is inclosed a copy of the Commission's Rules of Practice and Regulations to assist you in the preparation of your application for license in case lands of the United States or tribal Indian lands are to be crossed. Your attention is particularly called to Sections 1.80 to 1.85, page 8; to Sections 4.30 to 4.33, pages 18 and 19; to Sections 4.70 and 4.71, pages 30 and 31; and to Section 200.5, page 78. Your application should follow the form shown on page 78, should

be verified as shown on page 77, and should be accompanied by the exhibits listed on pages 30 and 31, certified as shown in Section 200.4, page 78. Your project maps should be prepared in accordance with specifications given in Section 4.42, pages 26 and 27.

Very truly yours,

LEON M. FUQUAY, *Secretary.*

Enclosure 102056.

FEDERAL POWER COMMISSION,
Washington.

EP-1827-South Dakota.

The Honorable SECRETARY OF THE INTERIOR.
Washington, D.C.

DEAR SIR: The Town of White River, South Dakota, has filed with the Commission an application for license for transmission line project No. 1827 in Mellette County, South Dakota, affecting lands of the United States within the Rosebud Indian Reservation.

The project consists of a 2,300-volt electric power line in sec. 34, T. 42 N., R. 29 W., Sixth principal meridian, which will transmit energy to operate a pumping plant in connection with a proposed water works system. The line occupies a right-of-way of unspecified width across Indian lands with provision for an alternate location as described in the application, three copies of which are inclosed.

You are invited to report whether the license, if issued, would interfere or be inconsistent with the purpose for which any reservation under your supervision was created or acquired, and to state the conditions which are deemed necessary for the adequate protection and utilization of any such reservation af-

fect. It is requested that your report recommend any conditions necessary for the protection of the interests of the Indians, including charges for the use of tribal lands.

Very truly yours,

LEON M. FUQUAY, *Secretary.*

APPENDIX H

In the District Court of the United States for the
District of South Dakota, Western Division

Civil No. 63 V.D.

UNITED STATES OF AMERICA, PLAINTIFF

v.

610.10 ACRES OF LAND, MORE OR LESS, IN MELLETTE
COUNTY, SOUTH DAKOTA: F. A. ANDERSON, NETTIE
E. ANDERSON, S. J. LARSON, ELLEN G. LARSON, MEL-
LETTE COUNTY, SOUTH DAKOTA, A PUBLIC CORPORA-
TION, MELVIN A. ANDERSON, C. A. WOOD, GEORGE C.
JOHNSON, ALSO KNOWN AS GEO. C. JOHNSON, FIRST
NATIONAL BANK OF THE BLACK HILLS, A CORPORA-
TION, DEFENDANTS

*Findings of fact, conclusions of law, and order
for judgment*

The above entitled action came on regularly to be heard before this Court at Sioux Falls, South Dakota, on the 12th day of December, 1941, at which time the United States of America, plaintiff herein, appeared by George Philip, United States Attorney for the District of South Dakota, and Matthew A. Brown, Special Attorney for the Department of Justice. The defendants Melvin A. Anderson and C. A. Wood filed their appearances in writing disclaiming any interest in the land to be acquired herein or in the compensation to be paid therefor. The defendant Mellette

(44A)

County, South Dakota, a public corporation, filed its appearance and disclaimer on condition that it be paid the sum of ONE THOUSAND EIGHT HUNDRED FIFTEEN DOLLARS AND SEVENTY-NINE CENTS (\$1,815.79) representing taxes which are a lien on the land to be acquired herein. The defendants S. J. Larson and Ellen G. Larson filed their appearance in writing disclaiming any interest in the land to be acquired herein or in the compensation to be paid therefor on condition that they be relieved of the terms of the option hereinafter described. The defendants F. A. Anderson, Nettie E. Anderson, George C. Johnson also known as Geo. C. Johnson, and First National Bank of the Black Hills, a corporation, submitted a petition for payment and all parties joined in a stipulation for the immediate submission of the cause and for judgment therein, which petition and stipulation and the appearances above recited have been presented to this Court and are ordered to be filed in this proceeding.

The Court thereupon proceeded to a hearing of the case and having duly considered the matter and being fully advised in the premises, upon motion of all parties to the action, making the following

FINDINGS OF FACT

1. This is an action in condemnation whereby the plaintiff seeks to acquire title to the following described land situated in Mellette County, South Dakota, to-wit:

Lots 1, 2, 3, 4, 5, the South Half of the Southeast Quarter, the Northeast Quarter of the Southeast Quarter, of Section 8, and the North

Half of Section 17, Township 43 North, Range 28 West of the 6th Principal Meridian, containing 610.10 acres of land, more or less, in Mellette County, South Dakota, designated as Tract No. 189 of the Two Kettle Project on the Rosebud Indian Reservation,

and that it has the authority so to do. On June 10, 1941, it filed herein its declaration of taking of said land, and on October 23, 1941, deposited in the Registry of the Court the sum of SIX THOUSAND DOLLARS (\$6,000.00) as just compensation therefor.

2. At the time of the commencement of this action there was a dispute as to the ownership of said land between the defendants E. J. Larson and F. A. Anderson, and on April 22, 1941, the defendants E. J. Larson and Ellen O. Larson executed and delivered to the plaintiff their option offering to convey said land to the plaintiff for the sum of SIX HUNDRED TWENTY DOLLARS (\$620.00) net to them, which option does not expire by its terms until January 22, 1942. With the consent of the plaintiff and in consideration of its release of said defendants from the terms of said option said defendants have executed and delivered to the defendants First National Bank of the Black Hills and George C. Johnson a quit claim deed conveying all their interest in said land, and have filed herein their appearance disclaiming any interest in said land or in the compensation to be paid therefor.

3. At the time such compensation was deposited in the Registry of the Court the record owners of said land were the defendants George C. Johnson and First National Bank of the Black Hills and the only persons having any interest in or lien upon said land

or the compensation to be paid therefor were and are the defendants F. A. Anderson, Nettie E. Anderson, Mellette County, South Dakota, a public corporation, George C. Johnson, and First National Bank of the Black Hills.

4. Said sum of SIX THOUSAND DOLLARS (\$6,000.00) is just compensation for said land, is now on deposit in the Registry of this Court, and should be disbursed as provided in the petition for payment herein.

5. All the allegations of the petition for condemnation, amended petition for condemnation, declaration of taking, judgment on the declaration of taking, and the appearances, disclaimers, petition for payment and stipulation for judgment, heretofore filed herein are true and are by reference made a part hereof.

From the foregoing Findings of Fact this Court makes the following

CONCLUSIONS OF LAW

1. The United States on the filing of the declaration of taking and the deposit of the sum therein provided became and now is the owner in fee simple in trust for the Rosebud Sioux Tribe of Indians of South Dakota and entitled to the immediate possession of the land described at paragraph 1 of the Findings of Fact.

2. The defendants S. J. Larson and Ellen G. Larson have no interest in said land or in the compensation to be paid therefor and judgment should be entered relieving them of the terms of their option described as paragraph 8 of the Findings of Fact.

3. The defendants Melvin A. Anderson and C. A. Wood have no interest in said land or in the compensation to be paid therefor.

4. The sum of SIX THOUSAND DOLLARS (\$6,000.00) so deposited is and is accepted by the defendants as just compensation for said land; said sum is in the Registry of the Court and should be disbursed as follows:

To the County Treasurer of Mellette County, South Dakota, in payment of taxes on said land, the sum of.....	\$1, 815. 79
To M. A. Brown, Chamberlain, South Dakota, on account of recording and abstract fees advanced by him, the sum of.....	\$25. 00
(the excess, if any, to be paid to the said F. A. Anderson)	
To F. A. Anderson and First National Bank of the Black Hills, the balance, to wit: the sum of.....	\$4, 159. 21
(check therefor to be delivered to First National Bank of the Black Hills)	
 Total	 \$6, 000. 00

the checks therefor to be transmitted to Matthew A. Brown, Special Attorney, Department of Justice, Chamberlain, South Dakota, one of the attorneys for the plaintiff, for delivery by him to the payees.

Let Judgement be entered accordingly.

Dated this 12th day of December, 1941.

By the Court:

A. LEE WYMAN,
Judge of said District Court.

Attest:

ROY B. MARKER,
Clerk of said District Court.

[SEAL OF COURT]

[Indorsed] * * Filed Dec. 12, 1941, Roy B. Marker,
Clerk.

In the District Court of the United States for the
District of South Dakota, Western Division

Civil No. 63 W. D.

UNITED STATES OF AMERICA, PLAINTIFF

v.

610.10 ACRES OF LAND, MORE OR LESS, IN MELLETTE
COUNTY, SOUTH DAKOTA; F. A. ANDERSON, NETTIE E.
ANDERSON, S. J. LARSON, ELLEN G. LARSON, MEL-
LETTE COUNTY, SOUTH DAKOTA, A PUBLIC CORPORA-
TION, MELVIN A. ANDERSON, O. A. WOOD, GEORGE C.
JOHNSON, ALSO KNOWN AS GEO. C. JOHNSON, FIRST
NATIONAL BANK OF THE BLACK HILLS, A CORPORA-
TION, DEFENDANTS

Final Judgment

The above entitled action came on this day for hearing before the Court at Sioux Falls, South Dakota, upon the motion of the plaintiff for final judgment. The plaintiff appeared by its attorneys George Philip, United States Attorney for the District of South Dakota, and Matthew A. Brown, Special Attorney, Department of Justice. All defendants filed appearances and disclaimers which are recited in detail in the findings of fact, conclusions of law and order for judgment heretofore filed herein.

Upon all papers and files herein, the Court FINDS AND ADJUDGES that this is an action in condemnation whereby the plaintiff seeks to take for public use the land hereinafter described, that it has the right so to do under the authority stated in the petition for

condemnation and amended petition for condemnation, that on June 18, 1941, it caused to be filed herein its declaration of taking of said land, and on October 23, 1941, to be deposited in the Registry of the Court as just compensation therefor the sum of SIX THOUSAND DOLLARS (\$6,000.00). Said land is described as follows:

Lots 1, 2, 3, 4, 5, the South Half of the Southeast Quarter, the Northeast Quarter of the Southeast Quarter, of Section 8, and the North Half of Section 17, Township 43 North, Range 28 West of the 6th Principal Meridian, containing 610.10 acres of land, more or less, in Mellette County, South Dakota, designated as Tract No. 189 of the Two Kettle Project on the Rosebud Indian Reservation.

And it appearing to the satisfaction of the Court that all persons having or claiming any interest in said land or any part thereof have heretofore filed herein their stipulation for judgment upon which the Court has made and entered its Findings of Fact, Conclusions of Law, and Order for Judgment, the Court FINDS and ADJUDGES that, by virtue of the filing of said declaration of taking and the deposit of such compensation, said land was taken and condemned for the use of the United States of America, the plaintiff herein, in connection with the Two Kettle Project on the Rosebud Indian Reservation in South Dakota, and the plaintiff thereby became the owner of said land in trust for the Rosebud Sioux Tribe of Indians of South Dakota and entitled to the immediate possession thereof, the estate so acquired is the full fee simple

title thereto, and the defendants named in the petition for condemnation and amended petition for condemnation and all persons claiming by, through or under them, or any of them, subsequent to the commencement of this action, have no right, title or interest therein or lien or encumbrance thereon and have no right to share in the compensation therefor except as provided in said order for judgment.

IT IS FURTHER ADJUDGED that the defendants S. J. Larson and Ellen G. Larson be and they hereby are relieved of the terms of their option dated April 22, 1941, whereby they offered to convey said land to the plaintiff for the sum of SIX HUNDRED TWENTY DOLLARS (\$620.00) net to them.

The Court further FINDS AND ADJUDGES that the just compensation for said land is the sum of SIX THOUSAND DOLLARS (\$6,000.00) which sum is now on deposit in the Registry of the Court.

IT IS FURTHER ORDERED that the Clerk be and he hereby is authorized and directed to disburse such compensation as follows:

To the County Treasurer of Mellette County, South Dakota, in payment of taxes on said land, the sum of.....	\$1, 815. 79
To M. A. Brown, Chamberlain, South Dakota, on account of recording and abstract fees advanced by him, the sum of.....	\$25. 00
(the excess if any to be paid to the said F. A. Anderson)	
To F. A. Anderson and First National Bank of the Black Hills, the balance, to wit: the sum of.....	\$4, 159. 21
(the check therefor to be delivered to First National Bank of Black Hills)	
Total	\$6, 000. 00

and to transmit the checks for such amounts to Matthew A. Brown, Special Attorney, Department of

Justice, Chamberlain, South Dakota, for delivery by him to the payees.

Dated this 12th day of December, 1941.

By the Court:

A. LEE WYMAN,
Judge of said District Court.

Attest:

ROY B. MARKER,
Clerk of said District Court.

[SEAL OF COURT]

[Indorsed]—Filed Dec. 12, 1941, Roy B. Marker,
Clerk.

APPENDIX I

AUGUST 21, 1947.

HON. HARLAN J. BUSHFIELD,
United States Senate.

MY DEAR SENATOR BUSHFIELD: Receipt is acknowledged of your letter of August 11 about Mrs. Charlotte Gordon Odden's application for a patent in fee covering her 160-acre allotment, No. 4248, on the Rosebud Reservation, described as the SW $\frac{1}{4}$ sec. 11, T. 96 N., R. 74 W., 5th P.M., Tripp County, South Dakota.

The application was presented by Mrs. Odden sometime in February, and after action by the Tribal Council the papers were received about April 1. Because of the shortage of personnel we were unable to handle this case as promptly as it should have been handled. I regret to inform you that the papers in this case were set aside for some time without action. The application has now been approved. We are requesting the Bureau of Land Management to expedite issuance of the patent. When the patent is received, it will be promptly sent to Superintendent Whitlock for delivery.

We regret the delay in the matter.

Sincerely yours,

(Sgd) H. M. CRITCHFIELD,
(For the Commissioner).

Bureau of Land Management, with original report on application for a patent in fee. Special attention to this case will be appreciated.

(53A)

JUL 30 1976

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, *et al.*,
Respondents.

BRIEF AMICI CURIAE OF
ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.,
THE OGLALA SIOUX TRIBE OF THE
PINE RIDGE RESERVATION, SOUTH DAKOTA, AND
THE CHEYENNE RIVER SIOUX TRIBE OF THE
CHEYENNE RIVER RESERVATION, SOUTH DAKOTA
IN SUPPORT OF PETITIONER

ARTHUR LAZARUS, JR.
600 New Hampshire Ave., N.W.
Washington, D.C. 20037
Attorney for Amici Curiae.

Of Counsel:

W. RICHARD WEST, JR.

TABLE OF CONTENTS

Page

INTEREST OF <i>AMICUS CURIAE</i>	2
STATEMENT OF THE CASE	5
SUMMARY OF ARGUMENT	12

ARGUMENT

I. The subsequent administrative and legislative treatment of the areas of the Rosebud Reservation opened to settlement by the 1904, 1907, and 1910 Acts confirms the conclusion that the legislation did not effect the disestablishment of reservation lands in Gregory, Tripp, and Mellette Counties, South Dakota	13
A. The subsequent administrative treatment of the areas of the Rosebud Reservation opened to settlement by the 1904, 1907, and 1910 Acts supports the proposition that the legislation did not effect the disestablishment of reservation lands. . . .	14
B. The subsequent legislative treatment of the areas of the Rosebud Reservation opened to settlement by the 1904, 1907, and 1910 Acts supports the proposition that the statutes did not effect the disestablishment of reservation lands . . .	17
II. A determination that the 1904, 1907, and 1910 Acts disestablished parts of the Rosebud Reservation would represent not only a significant departure from the administrative and legislative treatment which always has been accorded such lands, but also would have substantial and undeniably deleterious effects on the Rosebud Sioux Tribe and its members	21
A. A determination that the 1904, 1907, and 1910 Acts disestablished parts of the Rosebud Reservation would severely disrupt the political and cultural life of the Rosebud Sioux Tribe, because such a decision would result in the further extension of state jurisdiction over the	

(ii)

	<u>Page</u>
Tribe and many of its members at the expense of tribal and federal authority	22
B. A determination that the 1904, 1907, and 1910 Acts disestablished parts of the Rosebud Reservation would have a detrimental effect on the Rosebud Sioux Tribe's economy by depriving the Tribe and many of its members of substantial federal benefits which are contingent on Gregory, Tripp, and Mellette Counties' being considered a part of the Reservation	28
1. The title to lands restored to the Rosebud Reservation under section 3 of the Indian Reorganization Act would be in serious question	28
2. The Rosebud Sioux Tribe and many of its members no longer would be entitled to certain federal funds which can be distributed only to Indian reservation areas	31
a. The Comprehensive Employment and Training Act of 1973	31
b. Public Works and Economic Development Act of 1965	34
c. The Act of April 11, 1970	35
d. The Housing Act of 1949 and the Housing and Urban Development Act of 1968	36
e. Crime Control Act of 1973	38
CONCLUSION	40

TABLE OF AUTHORITIES

Cases:

<i>Affiliated Ute Citizens v. United States</i> , 406 U.S. 128 (1972)	2
<i>Bowman v. Udall</i> , 243 F. Supp. 672 (D. D.C. 1965)	31
<i>Brader v. James</i> , 246 U.S. 88 (1918)	22
<i>Carpenter v. Shaw</i> , 280 U.S. 363 (1930)	17

(iii)

Cases, continued:

	<u>Page</u>
<i>Cherokee Nation v. Georgia</i> , 30 U.S. (5 Pet.) 1 (1831)	23
<i>Cherokee Nation v. Hitchcock</i> , 187 U.S. 294 (1902)	22
<i>Choate v. Trapp</i> , 224 U.S. 665 (1912)	17-18
<i>Cook v. Parkinson</i> , No. 75-5867 (Supreme Court)	3
<i>DeCoteau v. District County Court</i> , 420 U.S. 425 (1975)	2
<i>Donnelly v. United States</i> , 228 U.S. 243 (1913)	25
<i>Ex Parte Morgan</i> , 20 Fed. 298 (W.D. Ark. 1883)	27
<i>Ex Parte Wilson</i> , 140 U.S. 575 (1891)	25
<i>Kennerly v. District Court</i> , 400 U.S. 298 (1971)	25
<i>Lone Wolf v. Hitchcock</i> , 187 U.S. 553 (1903)	10, 22
<i>Mattz v. Arnett</i> , 412 U.S. 481 (1973)	13, 17
<i>McClanahan v. State Tax Comm'n</i> , 411 U.S. 164 (1973)	25
<i>Mescalero Apache Tribe v. Jones</i> , 411 U.S. 145 (1973)	2, 26
<i>Moe v. Confederated Salish and Kootenai Tribes</i> , 44 U.S.L.W. 4535 (April 27, 1976)	24
<i>Pablo v. People</i> , 46 Pac. 636 (Colo. 1881)	27
<i>Puyallup Tribe v. Dept. of Game</i> , 391 U.S. 392 (1962)	2
<i>Rosebud Sioux Tribe v. Kneip</i> , 521 F.2d 87 (8th Cir. 1975)	12, 23
<i>Rosebud Sioux Tribe v. Kneip</i> , No. 75-562 (Supreme Court)	12
<i>Settler v. Lameer</i> , 507 F.2d 231 (9th Cir. 1974)	27
<i>Seymour v. Superintendent</i> , 368 U.S. 351 (1962)	13, 16, 17, 18, 24
<i>Sioux Nation v. United States</i> , 500 F.2d 458 (Ct. Cl. 1974)	5
<i>Sioux Tribe v. United States</i> , 97 Ct. Cl. 613 (1942)	6
<i>The Kansas Indians</i> , 72 U.S. (5 Wall.) 667 (1866)	24

(iv)

<i>Cases, continued:</i>	<u>Page</u>
<i>The New York Indians</i> , 72 U.S. (5 Wall.) 708 (1866)	24
<i>Tooisgah v. United States</i> , 186 F.2d 93 (10th Cir. 1950).	25
<i>Train v. Natural Resources Defense Council</i> , 421 U.S. 60 (1975).	17
<i>Udall v. Tallman</i> , 380 U.S. 1 (1965).	16
<i>United States ex rel. Condon v. Erickson</i> , 478 F.2d 684 (8th Cir. 1973)	18
<i>United States ex rel. Cook v. Parkinson</i> , 525 F.2d 120 (8th Cir. 1975)	3, 23
<i>United States v. Celestine</i> , 215 U.S. 278 (1909).	2
<i>United States v. Holliday</i> , 70 U.S. (Wall.) 407 (1866)	16
<i>United States v. Kagama</i> , 118 U.S. 375 (1886).	4, 22
<i>United States v. Mazurie</i> , 419 U.S. 544 (1975).	26
<i>Warren Trading Post v. Arizona State Tax Comm'n</i> , 380 U.S. 685 (1965)	2
<i>Williams v. Lee</i> , 358 U.S. 217 (1958)	25
<i>Worcester v. Georgia</i> , 31 U.S. (6 Pet.) 515 (1832).	23
 <i>Statutes:</i>	
Act of February 28, 1877, ch. 72, 19 Stat. 254	6
Act of March 2, 1889, ch. 405, 25 Stat. 888	7
Act of February 20, 1904, ch. 161, 33 Stat. 46	4
Act of April 23, 1904, ch. 1484, 33 Stat. 254	<i>passim</i>
Act of April 23, 1904, ch. 1495, 33 Stat. 302	4
Act of April 27, 1904, ch. 1620, 33 Stat. 319	4
Act of April 27, 1904, ch. 1624, 33 Stat. 352	4
Act of April 28, 1904, ch. 1820, 33 Stat. 567	4
Act of December 21, 1904, ch. 22, 33 Stat. 595	4
Act of March 3, 1905, ch. 1452, 35 Stat. 452	4
Act of March 22, 1906, ch. 1126, 34 Stat. 80	4

(v)

<i>Statutes, continued:</i>	<u>Page</u>
Act of April 21, 1906, ch. 1645, 34 Stat. 124	4
Act of June 21, 1906, ch. 3504, 34 Stat. 334	4
Act of March 1, 1907, ch. 2285, 34 Stat. 1035	4
Act of March 2, 1907, ch. 2536, 34 Stat. 1230	<i>passim</i>
Act of May 29, 1908, ch. 217, 36 Stat. 458	4
Act of May 29, 1908, ch. 218, 35 Stat. 460	4
Act of May 30, 1908, ch. 237, 35 Stat. 558	4
Act of May 27, 1910, ch. 257, 36 Stat. 440	4
Act of May 30, 1910, ch. 260, 36 Stat. 448	<i>passim</i>
Act of June 1, 1910, ch. 264, 36 Stat. 455	4
Act of February 14, 1913, ch. 54, 37 Stat. 675	4
Act of January 11, 1915, ch. 8, 38 Stat. 792	17
Act of March 3, 1919, ch. 110, 40 Stat. 1320	17
Act of June 18, 1934, ch. 576, 48 Stat. 984	14, 29
Act of July 15, 1949, ch. 388, 63 Stat. 413, <i>as amended</i> , 42 U.S.C.A. §§1441 <i>et seq.</i> (1969).	36
Act of December 11, 1963, Pub. L. No. 88-196, 77 Stat. 349	18, 19
Act of August 20, 1964, Pub. L. No. 88-463, 78 Stat. 560	20
Act of August 26, 1965, Pub. L. No. 89-136, 79 Stat. 552	34, 35
18 U.S.C.A. §1154 (1966)	26, 27
Act of August 1, 1968, Pub. L. No. 90-448, 82 Stat. 602	36, 37
Act of April 11, 1970, Pub. L. No. 91-229, 84 Stat. 120	35
Act of August 6, 1973, Pub. L. No. 93-83, 87 Stat. 197	38
Act of December 28, 1973, Pub. L. No. 93-203, 87 Stat. 839	31, 32, 33

<i>Congressional Materials:</i>	<u>Page</u>
S. 7390, 57th Cong., 29 Sess. (1903)	9
S. 7379, 60th Cong., 2d Sess. (1908)	11
H. Rept. No. 2099, 57th Cong., 1st Sess. (1902)	8
H. Rept. No. 3839, 57th Cong., 2d Sess. (1903).	9
H. Rept. No. 7613, 59th Cong., 2d Sess. (1907).	10
H.R. Rept. No. 93-659, 93rd Cong., 1st Sess. (1973).	33
H.R. Conf. Rept. No. 93-737, 93rd Cong., 1st Sess. (1973)	33
S. Rept. No. 662, 57th Cong., 1st Sess. (1902).	8
S. Rept. No. 3271, 57th Cong., 2d Sess. (1903).	9
S. Rept. No. 651, 58th Cong., 2d Sess. (1904).	10
S. Rept. No. 887, 60th Cong., 2d Sess. (1909).	11
S. Rept. No. 93-304, 93rd Cong., 1st Sess. (1973)	33
S. Conf. Rept. No. 93-636, 93rd Cong., 1st Sess. (1973)	33
36 Cong. Rec. 2748 (1903).	9
41 Cong. Rec. 3182 (1907).	10
 <i>Administrative Materials:</i>	
29 C.F.R. Parts 96, 97, 99 (1975)	33
13 C.F.R. Parts 302, 305 (1976)	35
Federal Register, June 25, 1936 (F.R. Doc. 966)	29
Federal Register, February 12, 1938 (F.R. Doc. 28-466)	29
Federal Register, May 24, 1957 (F.R. Doc. 57-4213).	29
30 Fed. Reg. 15588 (1965).	29
32 Fed. Reg. 14276 (1967).	29
33 Fed. Reg. 146 (1968)	29
54 I.D. 559 (1934).	15, 30
56 I.D. 330 (1938).	31

<i>Administrative Materials, continued:</i>	<u>Page</u>
67 I.D. 11 (1960)	31
69 I.D. 195 (1962)	31
Letter of February 14, 1907, from E.A. Hitchcock, Secre- tary of the Interior, to Chairman of House Committee on Indian Affairs	10
Letter of June 30, 1903, from the Commissioner of Indian Affairs to James McLaughlin	19
Memorandum Opinion of April 6, 1972, from Wallace G. Dunker, Field Solicitor, to Wyman D. Babby, Area Director	16
Proceedings of Councils held by Inspector McLaughlin with Indians of the Rosebud Indian Reservation (April 21, 1909)	11
Solicitor's Opinion M-36802 (unpublished, dated March 13, 1970)	15
 <i>Treaties and Agreements:</i>	
Treaty of April 29, 1868, 15 Stat. 635	6
Agreement of September 14, 1901, 33 Stat. 254	8
 <i>Miscellaneous:</i>	
Cohen, F. Handbook of Federal Indian Law (1942 ed.)	27
Constitution and By-laws of the Cheyenne River Sioux Tribe	27
Constitution and By-laws of the Oglala Sioux Tribe of the Pine Ridge Reservation	27

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, *et al.*,
Respondents.

BRIEF AMICI CURIAE OF
ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.,
THE OGLALA SIOUX TRIBE OF THE
PINE RIDGE RESERVATION, SOUTH DAKOTA, AND
THE CHEYENNE RIVER SIOUX TRIBE OF THE
CHEYENNE RIVER RESERVATION, SOUTH DAKOTA
IN SUPPORT OF PETITIONER

Pursuant to Rule 42(2), the Association on American Indian Affairs, Inc., a tax-exempt organization having its principal office at 432 Park Avenue South, New York, New York 10016, the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, and the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota, file the attached brief *amici curiae* in support of petitioner in the above-captioned case. The petitioner Rosebud Sioux Tribe and the respondents, the Honorable Richard Kneip, et al., have consented to the filing of this brief *amici curiae*.

INTEREST OF *AMICI CURIAE*

The Association on American Indian Affairs, Inc., is a nonprofit membership corporation organized under the laws of the State of New York for the purpose of protecting the rights and improving the welfare of American Indians. The Association is the largest Indian-interest organization in the United States, and is nationwide in scope, with a membership of 50,000 that consists of both Indians and non-Indians. The Association frequently has participated in leading cases involving issues of Indian law before the federal and state courts, including the filing of a brief with this Court in *DeCoteau v. District County Court*, 420 U.S. 425 (1975), and the filing of briefs *amicus curiae* in *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973), *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972), *Puyallup Tribe v. Dept. of Game*, 391 U.S. 392 (1968), and *Warren Trading Post Co. v. Arizona State Tax Comm'n*, 380 U.S. 685 (1965).

The Oglala Sioux Tribe and the Cheyenne River Sioux Tribe are federally recognized Indian tribes which, respectively, govern their members on the Pine Ridge Reservation and the Cheyenne River Reservation. Pursuant to the provisions of so-called surplus lands acts which were enacted in the early twentieth century, portions of both Reservations were opened to settlement by non-Indians. See Act of May 27, 1910, ch. 257, 36 Stat. 440 (Pine Ridge Reservation); Act of May 29, 1908, ch. 218, 35 Stat. 460 (Cheyenne River Reservation). Without exception the areas opened to such settlement have been recognized as Indian country by Congress and have been consistently administered as reservation lands by the Department of the Interior.

This case presents a question of great and continuing concern to the Association, to the Oglala Sioux Tribe, and to the Cheyenne River Sioux Tribe—whether the “surplus lands” statutes which were unilaterally enacted by Congress at the turn of the twentieth century without the consent of the affected Indian tribes, and which opened all or parts of the tribes’ reservations to settlement by non-Indians, effected a termination of reservation status. In the present case the Association, the Oglala Sioux Tribe, and the Cheyenne River Sioux Tribe are concerned with this broad issue in a specific context—namely, whether the Acts of April 23, 1904,¹ March 2, 1907,² and May 30, 1910,³ which were enacted without the consent of Rosebud Sioux Tribe, and in which Congress explicitly declared that the United States was not purchasing the lands opened to settlement, effected a termination of the reservation status of three-fourths of the Rosebud Reservation.

If the Court of Appeals’ decision in this case is upheld, the ultimate effect of the holding on the Oglala Sioux Tribe⁴ and the Cheyenne River Sioux Tribe, as well as numerous other Indian tribes and their members whose reservations are affected by surplus lands statutes,⁵ will

¹Act of April 23, 1904, ch. 1484, 33 Stat. 254.

²Act of March 2, 1907, ch. 2536, 34 Stat. 1230.

³Act of May 30, 1910, ch. 260, 36 Stat. 448.

⁴The interest of *amicus curiae* Oglala Sioux Tribe in the present litigation is immediate. In reliance upon its decision in this case, the court below has held that the Act of May 27, 1910, which opened the Bennett County portion of the Pine Ridge Reservation to settlement, also effected a termination of reservation status. See *United States ex rel. Cook v. Parkinson*, 525 F.2d 120 (8th Cir. 1975). A petition for a writ of certiorari in the *Cook* case is now pending before the Court. See *Cook v. Parkinson*, No. 75-5867 (petition for writ of certiorari, filed December 8, 1975).

⁵At the present time fifteen Indian reservations, excluding the Rosebud, Pine Ridge, and Cheyenne River Reservations, are

[Footnote continued]

be nothing short of a political and cultural revolution. The exclusive jurisdiction of the federal government over Indians who reside on reservation areas which have been opened by Congress to settlement by non-Indians will be terminated. Furthermore, the authority of Indian tribes to exercise traditional powers of self-government over a significant part of their membership will be severely curtailed or entirely eliminated, and, indeed, for jurisdictional purposes, Indians residing on reservation lands opened to settlement will be left to the mercy of the States, which on a previous occasion this Court quite aptly has characterized as "their deadliest enemies." *United States v. Kagama*, 118 U.S. 375, 384 (1886). Finally, a determination that surplus lands acts terminated the reservation status of Indian lands will mean an end for many tribes to substantial federal benefits which legally can be utilized only in reservation areas.

The *amici curiae* recognize that the key legal inquiry is whether the 1904, 1907, and 1910 Acts, in light of relevant legislative materials and principles relating to surplus lands legislation which have been established by this Court in a number of cases, terminated the reser-

affected by surplus lands legislation. See Act of February 14, 1913, ch. 54, 37 Stat. 675; Act of June 1, 1910, ch. 264, 36 Stat. 455; Act of May 30, 1910, ch. 260, 36 Stat. 448; Act of May 30, 1908, ch. 237, 35 Stat. 558; Act of May 29, 1908, ch. 218, 35 Stat. 460; Act of May 29, 1908, ch. 217, 35 Stat. 458; Act of March 1, 1907, ch. 2285, 34 Stat. 1035; Act of June 21, 1906, ch. 3504, 34 Stat. 334; Act of April 21, 1906, ch. 1645, 34 Stat. 124; Act of March 22, 1906, ch. 1126, 34 Stat. 80; Act of March 3, 1905, ch. 1452, 35 Stat. 458; Act of December 21, 1904, ch. 22, 33 Stat. 595; Act of April 28, 1904, ch. 1820, 33 Stat. 567; Act of April 27, 1904, ch. 1624, 33 Stat. 352; Act of April 27, 1904, ch. 1620, 33 Stat. 319; Act of April 23, 1904, ch. 1495, 33 Stat. 302; Act of February 30, 1904, ch. 161, 33 Stat. 46.

vation status of Gregory, Tripp, and Mellette Counties. The petitioner and the United States as *amicus curiae*, however, have submitted briefs supporting in detail the position that the aforementioned Acts did not reduce the boundaries of the Rosebud Reservation—a position in which *amici curiae* fully concur.

In order to avoid needless repetition, and to facilitate the consideration of materials which otherwise might not be brought to the Court's attention, the Association on American Indian Affairs, the Oglala Sioux Tribe, and the Cheyenne River Sioux Tribe have chosen to address issues which are not likely to be covered in briefs submitted by the Rosebud Sioux Tribe and the United States. Specifically, the attached brief is offered to assist the Court in recognizing that: (1) the subsequent legislative and administrative treatment of the areas of the Rosebud Reservation opened to settlement by the 1904, 1907, and 1910 Acts confirms the conclusion that the statutes were not intended to effect the disestablishment of reservation lands; and (2) a contrary determination not only departs from subsequent administrative and legislative treatment, but also would have undeniably deleterious social and economic effects on the Rosebud Sioux Tribe and its members.

STATEMENT OF THE CASE

Petitioner, the Rosebud Sioux Tribe, is a constituent part of the Sioux Nation, which, as early as 1851, was recognized by the United States as the owner of a vast domain in what are now the States of North Dakota, South Dakota, Nebraska, Montana, and Wyoming. See *Sioux Nation v. United States*, 500 F.2d 458, 460 (Ct. Cl. 1974). Pursuant to the provisions of a treaty entered into on April 29, 1868, the United States "set apart for the absolute and undisturbed use and occupation" of the

Sioux Nation the Great Sioux Reservation, which embraced approximately 28 million acres of land west of the Missouri River in the Territory of Dakota. Treaty of April 29, 1868, 15 Stat. 635, 636. Article II of the 1868 Treaty expressly guaranteed that no persons except authorized officials of the federal government would be "permitted to pass over, settle upon or reside" on the Reservation. Treaty of April 29, 1868, 15 Stat. at 636. Finally, the 1868 Treaty provided in Article XII that a sale of any part of the Reservation would not be "of any validity" absent the written consent of three-fourths of the male adults of the Sioux Nation. Treaty of April 29, 1868, 15 Stat. at 639.

During the next forty years the United States repeatedly demonstrated a singular inability to abide by the promises made to the Sioux Nation in 1868. Within a decade after the 1868 Treaty became effective, non-Indians initiated a persistent and ultimately effective campaign to convince the federal government to reduce further the Sioux Nation's territory. In capitulation to such pressures, the United States in 1877 acquired unilaterally and without the Sioux Nation's consent approximately 7.5 million acres of the Black Hills portion of the Reservation, which contained substantial gold deposits. *See* Act of February 28, 1877, ch. 72, 19 Stat. 254; *Sioux Tribe v. United States*, 97 Ct. Cl. 613, 655-56 (1942).

In 1889 Congress enacted legislation which effected yet another reduction in the Sioux Nation's reservation. Pursuant to the Act of March 2, 1889, the provisions of which had been assented to by three-fourths of the male adults of the Sioux Nation, the United States restored half of the Great Sioux Reservation to the public domain, and divided the balance into six separate reservations. *See*

Act of March 2, 1889, ch. 405, §§ 1-6, 21, 25 Stat. 888, 889-90, 897-98. Section 2 of the 1889 Act established a permanent reservation for the Rosebud Sioux Tribe which included all or parts of what later became the counties of Todd, Mellette, Tripp, and Gregory in the State of South Dakota. *See* Act of March 2, 1889, ch. 405, § 2, 25 Stat. at 888. Section 19 extended to the reservation thus created all provisions of the 1868 Treaty not in conflict with the 1889 Act, including the promise of absolute and undisturbed use and occupancy, the assurance that all outsiders except for authorized federal employees would be barred, and the requirement that no reservation land would be sold without the written consent of three-fourths of the male adults. *See* Act of March 2, 1889, ch. 405, § 19, 25 Stat. at 896.

During the first decade of the twentieth century, Congress enacted unilaterally and without the consent of the Rosebud Sioux Tribe three so-called "surplus" land statutes which opened large parts of the Rosebud Reservation to settlement by non-Indians. *See* Act of May 30, 1910, ch. 260, 36 Stat. 448; Act of March 2, 1907, ch. 2536, 34 Stat. 1230; Act of April 23, 1904, ch. 1484, 33 Stat. 254. These enactments were labeled "surplus land statutes" because they disposed of land which supposedly was not needed immediately for allotment to individual Indians, and which therefore was deemed by the federal government to be "surplus" to the Tribe's needs. Pursuant to the provisions of all three statutes, parts of the Rosebud Reservation were made available to non-Indian settlers for sale, and the proceeds from such sales were credited to the Tribe as they were received by the federal government. *See* Act of May 30, 1910, ch. 260, § 7, 36 Stat. at 451; Act of March 2, 1907, ch. 2536, § 5, 34 Stat. at 1231; Act of April 23, 1904, ch. 1484, 33 Stat. at 256.

The history of the three surplus land statutes affecting the Rosebud Reservation actually commences in 1901 when the federal government dispatched a representative to the Rosebud Sioux Tribe to negotiate an agreement for the cession and sale of approximately 416,000 acres in the Gregory County portion of the reservation established by the 1889 Act. Subsequent negotiations resulted in an agreement pursuant to which petitioner did "...cede, surrender, grant, and convey to the United States all [its] claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota..." Agreement of September 14, 1901, 33 Stat. 254. In consideration of the Rosebud Sioux Tribe's cession of lands, the United States agreed to pay petitioner the sum of \$1,040,000. *See* Agreement of September 14, 1901, 33 Stat. 254. Three-fourths of the male adults of the Tribe consented to the agreement. Agreement of September 14, 1901, 33 Stat. at 255.

Article VI of the 1901 Agreement required that it be ratified by Congress, and in 1902, therefore, bills were introduced in the Senate and the House of Representatives to effect ratification. The Senate bill, which, in addition to ratifying the Agreement, provided for free homesteads and the donation of school sections to the State of South Dakota, passed only after it had been objected to vigorously on the ground that public funds should not be used to purchase Indian land which in turn was to be given to homesteaders free of charge. *See generally* S. REPT. NO. 662, 57th Cong., 1st Sess. 1-2 (1902). The House of Representatives ultimately rejected both of the provisions added to the 1901 Agreement by the Senate. *See generally* H. REPT. NO. 2099, 57th Cong., 1st Sess. 1 (1902).

In response to opposition to the 1902 bills, legislation was proposed in 1903 which adopted the "surplus land" format, and provided that petitioner's reservation in Gregory County would be opened for settlement and sale with proceeds from such sales to be credited to the Tribe. *See* S. 7390, 57th Cong., 2d Sess. (1903). Although the preambles of the bills set forth the 1901 Agreement approved by petitioner, the "modified Agreement" which followed the enacting clause contained significant substantive changes that transformed the transaction from an outright sale of land for a sum certain into an arrangement pursuant to which the uncertain future proceeds from the sale of land would be expended for the benefit of the Rosebud Sioux Tribe as they were received by the United States. *See generally* S. REPT. NO. 3271, 57th Cong., 2d Sess. (1903); H. REPT. NO. 3839, 57th Cong., 2d Sess. (1903). Both bills, however, did require that the consent of the Rosebud Sioux Tribe to the new statutory approach be obtained. The Senate passed the proposed legislation, but the House declined to act on it. 36 CONG. REC. 2748 (1903).

In the summer of 1903 the federal government sent a representative to the Rosebud Indian Reservation "...for the purpose of negotiating a new agreement... along the lines proposed in Senate Bill No. 7390..." Letter of June 30, 1903, from the Commissioner of Indian Affairs to James McLaughlin, at 1-2. Despite the considerable efforts of the United States' representative to obtain the Rosebud Sioux' acquiescence in such an approach, less than three-fourths of the Tribe approved the surplus land format.

The federal government's failure to obtain the requisite consent for the agreement in no way dampened Congress' determination to enact a surplus lands statute opening up

the Rosebud Reservation in Gregory County to non-Indian settlement. In January and February, 1904, a committee in the House of Representatives reported out a new bill which employed the surplus lands approach, but conspicuously omitted any requirement of consent by petitioner.⁶ See S. REPT. NO. 651, 58th Cong., 2d Sess. (1904). The proposed legislation became law on April 23, 1904.

In December, 1906, new bills were introduced for the purpose of opening to non-Indian settlement that part of the Rosebud Sioux Tribe's reservation which is located in Tripp County, South Dakota. Congress forewent action on the proposed legislation while a representative of the federal government again was dispatched to the Rosebud Reservation to obtain the Tribe's consent. 41 CONG. REC. 3182 (1907). Despite the repeated efforts of the representative to obtain signatures approving the agreement, less than three-fourths of the male adults in fact agreed to Congress' offering. See H. REPT. NO. 7613, 59th Cong., 2d Sess. 7 (1907).

Although the United States and petitioner plainly had reached no understanding which complied with applicable consent requirements, the Secretary of the Interior nevertheless recommended legislation to ratify the "agreement". Letter of February 14, 1907, from E.A. Hitchcock, Secretary of the Interior, to Chairman of the House Committee on Indian Affairs, at 4. Congress, however, ignored the executive branch's advice, and

⁶Congress' hand had been strengthened considerably in early 1903 by this Court's decision in *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). There the Court upheld the Constitutional validity of a federal statute which ratified an outright sale of Indian land for a sum certain—despite the fact the requisite three-fourths consent required by an earlier treaty had not been obtained.

promptly enacted a unilateral surplus lands statute on March 2, 1907, to "... authorize the sale and disposition of [that] portion of the surplus or unallotted lands in the Rosebud Indian Reservation [located in Tripp County, South Dakota]". Act of March 2, 1907, ch. 2536, § 1, 34 Stat. 1230.

In 1908 yet a third surplus lands bill was introduced in the Senate to authorize the sale of the Rosebud Sioux Tribe's lands located in Mellette County, South Dakota. See S. 7379, 60th Cong., 2d Sess. (1908). The Secretary of the Interior, while not requesting that the consent of the Tribe be obtained, nevertheless recommended to Congress that it solicit "... the views of the Indians ... before the bill is finally acted on. ..." S. REPT. NO. 887, 60th Cong., 2d Sess. 3 (1909). The Senate Committee on Indian Affairs at first explicitly rejected the Secretary's suggestion because "... it would delay the consideration of the matter unduly. ..." S. REPT. NO. 887, 60th Cong., 2d Sess. 2 (1909). After the Senate failed to act on the proposed legislation, however, a representative of the federal government was instructed to visit the Rosebud Reservation not to obtain the consent of tribal members, but to "... take up with the Indians of the ... Rosebud [Reservation] the matter of opening parts of [the reservation] to settlement. ..." Proceedings of Councils held by Inspector McLaughlin with Indians of the Rosebud Indian Reservation, at 2 (April 21, 1909). Despite the repeated threats of the United States' representative that Congress would open Mellette County regardless of the Tribe's views, members of the Rosebud Sioux Tribe steadfastly refused to be intimidated, and continued to oppose further sales of their lands. On May 30, 1910, Congress responded by enacting legislation which authorized the "... sale and

disposition of a portion of the surplus and unallotted lands in Mellette [County] . . . in the Rosebud Indian Reservation. . . ." Act of May 30, 1910, ch. 260, § 1, 36 Stat. 448.

Pursuant to the provisions of 28 U.S.C. § 2201, petitioner brought an action in the United States District Court for the District of South Dakota seeking a declaratory judgment that the 1904, 1907, and 1910 surplus lands acts discussed above did not disestablish any part of the Rosebud Reservation as defined by the Act of March 2, 1889. In a judgment entered on February 15, 1974, the District Court decreed that the statutes ". . . did extinguish the reservation or 'Indian land' nature of the unallotted surplus lands in [Gregory, Tripp, and Mellette Counties] by returning them to the public domain, and did diminish the geographical location of the boundaries of the Rosebud Sioux Reservation to coincide with the boundaries of Todd County, South Dakota." *Rosebud Sioux Tribe v. Kneip*, No. Civ. 72-3030 (D.C. S.D. 1974) (judgment entered on February 15, 1974). In an opinion handed down on July 16, 1975, the United States Court of Appeals for the Eighth Circuit upheld the decision of the District Court. *See Rosebud Sioux Tribe v. Kneip*, 521 F.2d 87 (8th Cir. 1975). On October 11, 1975, the Rosebud Sioux Tribe petitioned this Court for a writ of certiorari to review the Eighth Circuit's decision, and on May 24, 1976, the Tribe's petition was granted. *See Rosebud Sioux Tribe v. Kneip*, No. 75-562.

SUMMARY OF ARGUMENT

A review of the administrative and legislative treatment accorded Gregory, Tripp, and Mellette Counties following enactment of the 1904, 1907, and 1910 Acts demonstrates that neither the Congress nor the Secretary

of the Interior believed the surplus lands legislation to have effected the disestablishment of affected portions of the Rosebud Reservation. A determination that the statutes did terminate the reservation status of parts of the Reservation not only would depart from established administrative and legislative precedent, but also would have a debilitating effect on the cultural and economic life of the Rosebud Sioux Tribe and its members. Specifically, such a decision would facilitate the further extension of state jurisdiction over members of the Tribe at the expense of federal and tribal authority, and, moreover, would disrupt the Tribe's economy by precipitating a cessation of substantial amounts of federal monies which can be distributed only to Indian reservation areas.

ARGUMENT

I.

THE SUBSEQUENT ADMINISTRATIVE AND LEGISLATIVE TREATMENT OF THE AREAS OF THE ROSEBUD RESERVATION OPENED TO SETTLEMENT BY THE 1904, 1907, AND 1910 ACTS CONFIRMS THE CONCLUSION THAT THE LEGISLATION DID NOT EFFECT THE DISESTABLISHMENT OF RESERVATION LANDS IN GREGORY, TRIPP, AND MELLETTE COUNTIES, SOUTH DAKOTA.

In a number of decisions, the Supreme Court has turned to the subsequent administrative and legislative treatment of lands opened to non-Indian settlement by surplus lands acts to determine whether a disestablishment of reservation lands occurred. *See, e.g., Seymour v. Superintendent*, 368 U.S. 351, 356-57 (1962). Indeed, in considering the legal import of such a statute in *Mattz v. Arnett*, 412 U.S. 481 (1973), the Court indicated explicitly that "... subsequent legislation . . . is not

always without significance.” *Id.* at 505 n. 25. An analysis of the subsequent administrative and legislative treatment of the areas of the Rosebud Reservation opened to settlement by the 1904, 1907, and 1910 Acts confirms the conclusion that such legislation did not terminate the reservation status of affected lands.

A. The subsequent administrative treatment of the areas of the Rosebud Reservation opened to settlement by the 1904, 1907, and 1910 Acts supports the proposition that the legislation did not effect the disestablishment of reservation lands.

On several occasions the Secretary of the Interior has indicated explicitly that he does not consider surplus lands legislation to have terminated the reservation status of Indian lands. In an opinion dated August 10, 1934, the Solicitor of the Department of the Interior, in interpreting the provision in the Indian Reorganization Act⁷ which authorized the restoration of unsold surplus lands to Indian tribes, offered the following analysis of the effect of statutes such as the 1904, 1907, and 1910 Acts:

This [historical summary] brings us up to the period of about 1890, at which time there was adopted the plan of opening to entry, sale, etc., the lands of reservations that were not needed for allotment, the Government taking over the lands only as trustee for the Indians. *Under this plan the Indians were to be credited with the proceeds only as the lands were sold, the United States not to be bound to purchase any portion of the lands so*

⁷Act of June 18, 1934, ch. 576, 48 Stat. 984; 25 U.S.C.A. §§461 *et seq.* (1963).

opened. Undisposed of lands of this class remain the property of the Indians until disposed of as provided by law (Ash Sheep Company v. United States, 252 U.S. 159). Such lands are usually referred to as surplus lands of Indian reservations opened to public entry. . . . [Emphasis added.]

54 I.D. 559, 560 (1934).

The foregoing construction of surplus lands statutes clearly supports the conclusion that they did not reduce the boundaries of affected Indian reservations. As the Solicitor's 1934 opinion explains, land opened to non-Indian settlement did not pass from Indian ownership to the public domain at the time surplus lands legislation was enacted by Congress, but, instead, remained the property of Indian tribes until it in fact was sold to purchasers. As this Court has indicated explicitly, in commenting favorably on the 1934 opinion, the Solicitor's construction of the surplus lands acts belies the proposition that such legislation effected the disestablishment of reservation lands. *See Seymour v. Superintendent*, 368 U.S. at 357 n. 14. *Accord*, Solicitor's Opinion M-36802 (unpublished, dated March 13, 1970) (analysis of the effect of the Act of June 1, 1910, opening the Fort Berthold Reservation to settlement).

Furthermore, the reasoning of the Solicitor's 1934 opinion has been applied specifically by the Department of the Interior to the 1904, 1907, and 1910 Acts affecting the Rosebud Reservation. After discussing the three Acts and their legislative history in detail, the Office of the Solicitor of the Department concluded as follows in an opinion rendered in 1972:

. . . [T]he three Acts of Congress cited above ' . . . did no more than open the way for non-Indian settlers to own land on the [Rosebud] reservation in

a manner which the Federal Government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards. . . .’ as the court stated in *Seymour v. Superintendent*. Clearly revealing the intent of Congress, the title to the 1907 and 1910 Acts declared the purpose to be ‘To authorize the sale and disposition of a portion of the surplus and unallotted lands. . . .’, and the provisions thereof set forth the necessary details at the same time reserving rights to the Indians to which they are entitled by treaty or agreement.

Accordingly . . . pursuant to applicable legal principles, the legal boundaries of the Rosebud Indian Reservation have not been diminished or altered by Congress since the establishment of the original boundaries thereof by the Act of March 2, 1889. . . . [Emphasis added.]

Memorandum Opinion of April 6, 1972, from Wallace G. Dunker, Field Solicitor, to Wyman D. Babby, Area Director, Aberdeen Area Office.

This Court frequently has affirmed the established legal principle that the determinations of the Secretary of the Interior with respect to federal statutes affecting Indians and Indian tribes are entitled to special deference. In *United States v. Holliday*, 70 U.S. (Wall.) 407 (1866), the Court upheld a decision of the Secretary of the Interior concerning an Indian matter on the ground that “. . . it is [our] rule to follow the action of the executive and other political departments of the government whose more special duty it is to determine such affairs.” *Id.* at 419. Furthermore, the principle articulated in the *Holliday* case was confirmed recently in *Udall v. Tallman*, 380 U.S. 1 (1965): “When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency

charged with its administration.” *Id.* at 16. Finally, no reasonable doubt can exist that, in the specific context of determining the legal effect of surplus lands statutes on reservation boundaries, the Secretary of the Interior’s treatment of areas opened to settlement by such legislation has been utilized to decide whether disestablishment of reservation lands occurred. *See, e.g., Mattz v. Arnett*, 412 U.S. at 505; *Seymour v. Superintendent*, 368 U.S. at 357. Thus, the Secretary of the Interior’s 1934 determination that surplus lands statutes did not reduce Indian reservation boundaries, and his more recent opinion that the 1904, 1907, and 1910 Acts did not effect the disestablishment of any part of the Rosebud Reservation, should be assigned great weight. *See generally Train v. Natural Resources Defense Council*, 421 U.S. 60, 75-87 (1975).

B. The subsequent legislative treatment of the areas of the Rosebud Reservation opened to settlement by the 1904, 1907, and 1910 Acts supports the proposition that the statutes did not effect the disestablishment of reservation lands.

On repeated occasions Congress has acted in a manner which supports the proposition that it did not intend to reduce the boundaries of the Rosebud Reservation by enacting the 1904, 1907, and 1910 Acts.⁸ The Act of

⁸On occasion Congress has referred to areas opened to settlement as being part of the “former” Rosebud Reservation. *See, e.g.,* Act of March 3, 1919, ch. 110, 40 Stat. 1320; Act of January 11, 1915, ch. 8, 38 Stat. 792. At most, however, such legislation creates an ambiguity with respect to the effect of the surplus lands legislation, and, under settled principles of Indian law, the ambiguity should be resolved in favor of the Rosebud Sioux Tribe. *Cf. Carpenter v. Shaw*, 280 U.S. 363 (1930); Choate

December 11, 1963, Pub. L. No. 88-196, 77 Stat. 349, for example, contains a number of provisions supportive of this conclusion. The 1963 Act, which is entitled "An Act to authorize the sale and exchange of isolated tracts of tribal land on the Rosebud Sioux Indian Reservation, South Dakota", provides the following in section 1:

Notwithstanding any other provision of law, upon request of the Rosebud Sioux Tribe, South Dakota, acting through its governing body, the Secretary of the Interior is authorized to exchange or to sell, by public or negotiated sale, the tribal interests in isolated tracts of land located in Tripp, Gregory, and Lyman Counties, South Dakota, and held by the United States in trust for the tribe; *Provided . . . (3) that any proceeds from the sale of land under this Act are used exclusively for the purchase of land on the reservation within land consolidation areas approved by the Secretary of the Interior. . . .* [Emphasis added.]

Act of December 11, 1963, Pub. L. No. 88-196, § 1, 77 Stat. 349. Section 2 of the 1963 Act provides that "[u]pon request of the Rosebud Sioux Tribe . . . acting through its governing body, the Secretary of the Interior is authorized to mortgage tribal interests in isolated tracts of land, in lieu of selling or exchanging them, and *the proceeds of the loan secured by the mortgage must be used exclusively for the acquisition of land on the reservation within land consolidation areas approved by the Secretary of the Interior. . . .*" [Emphasis added.]

v. Trapp, 224 U.S. 665 (1912). Moreover, use of the words "former" and "formerly" in statutes making reference to areas opened to settlement by surplus lands acts has not prevented courts from holding that disestablishment did not occur. See *Seymour v. Superintendent*, 368 U.S. at 356 n. 12; *United States ex rel. Condon v. Erickson*, 478 F.2d 684, 688 (8th Cir. 1973).

Act of December 11, 1963, Pub. L. No. 88-196, § 2, 77 Stat. 349.

The aforementioned provisions in the 1963 legislation cannot be reconciled with the position that Congress disestablished portions of the Rosebud Reservation under the 1904, 1907, and 1910 Acts. First, the 1963 Act is entitled "An Act to authorize the sale and exchange of isolated tracts of tribal land *on the Rosebud Indian Reservation*", and the legislation indicates explicitly that some of the "isolated tracts of tribal land" are located in Gregory and Tripp Counties, which were opened to settlement, respectively, by the 1904 and 1907 Acts. The obvious inference to be drawn is that in 1963 Congress considered Gregory and Tripp Counties to be a part of the Rosebud Reservation, or, to state the matter another way, that the surplus lands acts in no way had altered the reservation status of those portions of the Reservation located in Gregory and Tripp Counties.

Moreover, the third proviso in section 1 and similar language in section 2 offer additional evidence for the conclusion that Congress did not believe the 1904, 1907, and 1910 Acts had effected the disestablishment of affected reservation lands. The third proviso in section 1 requires that proceeds from the sale of isolated tracts may be used only ". . . for the purchase of land *on the reservation* within land consolidation areas approved by the Secretary of the Interior. . . ." (Emphasis added.) Act of December 11, 1963, Pub. L. No. 88-196, § 1, 77 Stat. 349. Section 2 contains an analogous provision which limits the use of proceeds derived from the mortgage of isolated tracts to the ". . . acquisition of land *on the reservation* within land consolidation areas approved by the Secretary of the Interior. . . ." (Emphasis added.) Act of December 11, 1963, Pub. L. No. 88-196, § 1, 77 Stat. 349.

The land consolidation districts referred to in the 1963 Act are located, *inter alia*, in Mellette County, which was opened to settlement by the 1910 surplus lands legislation. Since the proceeds from the sale or mortgage of isolated tracts, according to sections 1 and 2 of the 1963 Act, can be utilized only for the purchase of "land on the reservation within land consolidation areas", the most reasonable conclusion is that Congress believed Mellette County to be located within the boundaries of the Rosebud Reservation.

The Act of August 20, 1964, Pub. L. No. 88-463, 78 Stat. 560, supports the same conclusion. The 1964 Act, which is entitled "An Act to place in trust status certain lands on the Rosebud Sioux Reservation in South Dakota", contains the following provisions:

... That all the right, title, and interest in and to the following described tracts of land and the improvements thereon *on the Rosebud Sioux Reservation in South Dakota*, shall hereafter be held by the United States in trust for the benefit of the Rosebud Sioux Tribe of South Dakota. . . . [Emphasis added.]

Act of August 20, 1964, Pub. L. No. 88-463, §2, 78 Stat. at 561. Among the tracts included in the list which follows the foregoing provision is "Sec. 28, SW1/4SW1/4" of "T. 42 N., R. 33 W., 6th P.M.", which is located in Mellette County. Since the 1964 Act transferred to trust status tracts of land "on the Rosebud Sioux Reservation", the logical inference is that Congress, by including land located in Mellette County, considered that area to be a part of the Rosebud Reservation. Thus, both the 1963 and 1964 Acts, which afford the opportunity to see how Congress subsequently viewed the 1904, 1907, and 1910 statutes, provide substantial support for the posi-

tion that surplus lands legislation disestablished no part of the Rosebud Reservation.

II.

A DETERMINATION THAT THE 1904, 1907, AND 1910 ACTS DISESTABLISHED PARTS OF THE ROSEBUD RESERVATION WOULD REPRESENT NOT ONLY A SIGNIFICANT DEPARTURE FROM THE ADMINISTRATIVE AND LEGISLATIVE TREATMENT WHICH ALWAYS HAS BEEN ACCORDED SUCH LANDS, BUT ALSO WOULD HAVE SUBSTANTIAL AND UNDENIABLY DELETERIOUS EFFECTS ON THE ROSEBUD SIOUX TRIBE AND ITS MEMBERS.

As the discussion above demonstrates, a determination that the 1904, 1907, and 1910 Acts terminated the reservation status of areas on the Rosebud Reservation would represent a wholesale departure from the administrative and legislative treatment which, since enactment of the surplus lands statutes, has been accorded such lands by the United States. In addition, however, a decision that areas affected by the 1904, 1907, and 1910 Acts are no longer a part of the Rosebud Reservation would have an unquestionably devastating effect on the life and economy of the Rosebud Sioux Tribe and its members.

A. A determination that the 1904, 1907, and 1910 Acts disestablished part of the Rosebud Reservation would severely disrupt the political and cultural life of the Rosebud Sioux Tribe, because such a decision would result in the further extension of state jurisdiction over the Tribe and many of its members at the expense of tribal and federal authority.

As a matter of established law, the federal government rather than the states has exercised exclusive jurisdiction over Indian tribes and their members. As this Court emphasized in *United States v. Kagama*:

These Indian Tribes are the wards of the Nation. They are communities *dependent* on the United States; dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court whenever the question has arisen. [Original emphasis.]

118 U.S. at 383-84. *Accord*, F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 89-91 (1942 ed.); *see generally* *Brader v. James*, 246 U.S. 88 (1918); *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903); *Cherokee Nation v. Hitchcock*, 187 U.S. 294 (1902). If the boundaries of the Rosebud Reservation were reduced by the 1904, 1907, and 1910 Acts, the ultimate result will be a further extension of state jurisdiction over the Rosebud Sioux

Tribe and its members, and, conversely, a diminution of federal and tribal authority over the Rosebud Sioux. *See United States ex rel. Cook v. Parkinson*, 525 F.2d 120 (8th Cir. 1975); *Rosebud Sioux Tribe v. Kneip*, 521 F.2d 87 (8th Cir. 1975).

The effects of such a substantial alteration of the historical patterns of federal, state, and tribal jurisdiction on the Rosebud Sioux Tribe and its members will be nothing short of a political and cultural revolution. Even if the result of a determination that the 1904, 1907, and 1910 Acts reduced the boundaries of the Rosebud Reservation is only that state jurisdiction will be extended over Indians residing on non-trust lands in Gregory, Tripp, and Mellette Counties, the consequences may be highly significant. From an historical standpoint, the federal government consistently has recognized the unique status of Indian tribes as polities which possess many of the characteristics of a sovereign nation, and which traditionally have exercised extensive powers of self-government over their lands and members. *See generally Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). By contrast, state jurisdiction is inherently assimilative because it does not differentiate between Indians and non-Indians in the application of laws which unquestionably are important in shaping a society. State laws relating to such diverse subjects as land use, domestic relations, and probate, for example, if applied indiscriminately to non-Indian and Indian alike, would have an irreparably debilitating effect on Indian culture.

Moreover, in all probability, the establishment of state jurisdiction over Indians in non-trust areas would have a spillover effect into trust areas held by the Rosebud

Sioux Tribe and its members.⁹ In Gregory, Tripp, and Mellette Counties, trust property is widely dispersed among non-trust tracts, and the chances of maintaining a separate culture on trust lands surrounded by areas over which the state exercises jurisdiction would be most difficult, if not impossible.¹⁰

More critically, however, the proposition is hardly assured that state jurisdiction in the disestablished parts of the Rosebud Reservation would be limited to non-trust lands. Some state laws, of course, probably would be held inapplicable to trust property under any circumstances. Their trust status, for example, would prevent the application of state tax laws to tribal lands and individual allotments in Gregory, Tripp, and Mellette Counties. See *The Kansas Indians*, 72 U.S. (5 Wall.) 667 (1866); *The New York Indians*, 72 U.S. (5 Wall.) 708 (1866). Furthermore, from the standpoint of federal

⁹In Gregory, Tripp, and Mellette Counties, the Rosebud Sioux population numbers almost 2,000. Furthermore, the amount of trust property held by the Rosebud Sioux Tribe in the three counties approaches 140,000 acres, and individual members of the Tribe own allotted lands which total some 230,000 acres.

¹⁰Moreover, as this Court emphasized in the Seymour case, such a "checkerboard" approach to jurisdiction makes a rational scheme of criminal law enforcement virtually impossible:

... [L]aw enforcement officers operating in the area will find it necessary to search tract books in order to determine whether criminal jurisdiction over each particular offense, even though committed within the reservation, is in the State or Federal Government. Such an impractical pattern of checkerboard jurisdiction was avoided by [18 U.S.C.] §1151 and we see no justification for adopting an unwarranted construction of that language where the result would be merely to recreate confusion Congress specifically sought to avoid.

368 U.S. at 358. *Accord*, *Moe v. Confederated Salish and Kootenai Tribes*, ___U.S.____, 44 U.S.L.W. 4535, 4540 (April 27, 1976).

criminal jurisdiction, trust property located in the disestablished portion of the Rosebud Reservation, in all likelihood, would remain "Indian country" within the meaning of the federal criminal code. See 18 U.S.C.A. §§1151-53 (1966); *Donnelly v. United States*, 228 U.S. 243 (1913); *United States v. Celestine*, 215 U.S. 278 (1909); *Ex parte Wilson*, 140 U.S. 575 (1891); but see *Tooisigah v. United States*, 186 F.2d 93 (10th Cir. 1950).

Other state laws which pose a serious threat to the continued viability of tribal culture, such as those relating to land use planning, and hunting and fishing activities, might well be applicable to disestablished parts of the Rosebud Reservation. Although no legal authority appears to have addressed the foregoing issue directly, it is highly significant that, in exempting Indian tribes and individuals from state jurisdiction, this Court has placed considerable stress on the fact that the legally significant event occurred within the boundaries of an Indian reservation. Thus, in *Williams v. Lee*, 358 U.S. 217 (1958), which involved the issue whether the courts of the State of Arizona had the power to entertain a legal action against a member of the Navajo Tribe, the Court explained that "Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation." [Emphasis added.] *Id.* at 220. See generally *Kennerly v. District Court*, 400 U.S. 293 (1971). The same emphasis appears again in *McClanahan v. State Tax Comm'n*, 411 U.S. 164 (1973), when the Court, in rejecting the State of Arizona's attempt to collect a tax on income earned by a member of the Navajo Tribe on the Navajo Reservation, noted that "... appellant's rights as a reservation Indian were violated when the state collected a tax from her which it had no jurisdiction to impose." [Emphasis added.] *Id.* at 181.

Conversely, this Court intimated in *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973), that state authority over Indian property lying outside the boundaries of a reservation might be far more extensive. In holding that gross receipts taxes which the State of New Mexico had imposed on a resort owned by plaintiff on off-reservation land were legal, the following reasoning was offered:

... [T]ribal activities conducted outside the reservation present different considerations. 'State authority over Indians is yet more extensive over activities . . . not on any reservation.' *Organized Village of Kake*, supra, at 75, 7 L.Ed.2d 573. *Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.* [Citations omitted.] [Emphasis added.]

Id. at 148-49. Thus, the significant risk exists that, should the 1904, 1907, and 1910 Acts be held to have disestablished parts of the Rosebud Reservation, state jurisdiction over both non-trust and trust property in Gregory, Tripp, and Mellette Counties would be expanded significantly.

An expansion of state jurisdiction, not unexpectedly, would be accompanied by a diminution of federal and tribal control over tribal members on both trust and non-trust lands. In *United States v. Mazurie*, 419 U.S. 544 (1975), for example, the rule clearly has been established that federal and tribal regulation of liquor sales extends to all reservation lands.¹¹ See generally 18 U.S.C.A. § 1154 (1966). If Gregory, Tripp, and Mellette Counties are considered to be outside the boundaries of

¹¹The only exception is lands located in "non-Indian communities". See 18 U.S.C.A. § 1154 (1966).

the Rosebud Reservation, however, only trust property—at most—still would be subject to the federal and tribal regulation of liquor sales. 18 U.S.C.A. § 1154 (1966).

Furthermore, an Indian tribe's extraterritorial jurisdiction over its members is extremely limited, if not non-existent.¹² Cf. *Ex parte Morgan*, 20 Fed. 298 (W.D. Ark. 1883); see generally *Pablo v. People*, 46 Pac. 636 (Colo. 1881). Indeed, a leading authority on Indian law has averred that the "... jurisdiction of [an] Indian tribe ceases at the border of the reservation..." F. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* 148 n. 236 (1942 ed.) (relying on 18 OP. ATT'Y. GEN. 440 (1886)). Thus, a determination that the 1904, 1907, and 1910 Acts terminated the reservation status of Gregory, Tripp, and Mellette Counties undeniably would weaken profoundly the relationship between the Rosebud Sioux Tribe and its members residing in those areas.¹³

¹²In *Settler v. Lameer*, 507 F.2d 231 (9th Cir. 1974), the court did determine that the Yakima Nation possessed jurisdiction over the off-reservation hunting and fishing activities of its members. The holding appears to be based, however, on the fact that tribal members engaging in such activities are exercising explicitly conferred tribal treaty rights.

¹³The often tenuous nature of the relationship between an Indian tribe and its non-resident members is illustrated by provisions in the constitutions of *amici curiae* Oglala Sioux Tribe and Cheyenne River Sioux Tribe. Under both governing documents, only tribal members who reside on the reservation may participate in tribal elections. See CONSTITUTION AND BYLAWS OF THE OGLALA SIOUX TRIBE OF THE PINE RIDGE RESERVATION ART. VII; CONSTITUTION AND BYLAWS OF THE CHEYENNE RIVER SIOUX TRIBE ART. V.

B. A determination that the 1904, 1907, and 1910 Acts disestablished parts of the Rosebud Reservation would have a detrimental effect on the Rosebud Sioux Tribe's economy by depriving the Tribe and many of its members of substantial federal benefits which are contingent on Gregory, Tripp, and Mellette Counties' being considered a part of the Reservation.

The effects of a determination that the 1904, 1907, and 1910 surplus lands legislation terminated the reservation status of Gregory, Tripp, and Mellette Counties would be limited by no means to a disruption of the culture of the Rosebud Sioux Tribe. Such a decision also would pose a serious threat to the economy of the Rosebud Sioux Tribe by depriving the Tribe and many of its members of substantial federal benefits which are contingent on the reservation status of lands affected by the 1904, 1907, and 1910 Acts. Specifically, the title to lands restored to the Rosebud Reservation under the Indian Reorganization Act would be in jeopardy, and, furthermore, the distribution of substantial amounts of federal funds which are restricted to Indian reservation areas would cease.

1. The title to lands restored to the Rosebud Reservation under section 3 of the Indian Reorganization Act would be in serious question.

Section 3 of the Indian Reorganization Act contains the following:

... The Secretary of the Interior if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation opened before June

18, 1934, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public land laws of the United States. . . .

Act of June 18, 1934, ch. 576, §3, 48 Stat. 984; 25 U.S.C.A. §463 (1963). Pursuant to the foregoing provisions, the Secretary of the Interior, by an Order of Restoration promulgated on January 12, 1938, restored to the Rosebud Reservation all undisposed of surplus lands in the areas opened to settlement by the 1904, 1907, and 1910 Acts.¹⁴ See FEDERAL REGISTER, February 12, 1938, at 343-44 (F.R. Doc. 38-466).

Under the construction of section 3 which had been adopted by the Secretary of the Interior at the time surplus lands were restored to the Rosebud Reservation, the Order of Restoration could not possibly have been valid if Gregory, Tripp, and Mellette Counties were removed from the Reservation by the 1904, 1907, and 1910 Acts. Specifically, in a formal opinion published in 1934, the Solicitor of the Department of the Interior held as follows:

During the early years of our dealing with the Indians, the custom was to have individual or combined nations, tribes, or bands relinquish or cede to the United States large areas claimed by them for which there was usually a cash or other

¹⁴Pursuant to section 3 of the Indian Reorganization Act, lands also have been restored to the reservations of *amici curiae* Oglala Sioux Tribe and Cheyenne River Sioux Tribe. See, e.g., 33 FED. REG. 146 (1968) (Pine Ridge Reservation); FEDERAL REGISTER, June 25, 1936, at 667 (F.R. Doc. 966) (Pine Ridge Reservation); 32 FED. REG. 14276 (1967) (Cheyenne River Reservation); 30 FED. REG. 15588 (1965) (Cheyenne River Reservation); FEDERAL REGISTER, May 24, 1957, at 3693 (F.R. Doc. 57-4213) (Cheyenne River Reservation).

consideration, and also the setting apart or reserving of certain lands within such ceded areas or from lands belonging to the United States and located elsewhere. . . . *In this way the Indians lost all identity with the ceded areas and their rights and interests therein were recognized as having been completely extinguished.*

In years following, for reasons varying on the different reservations, portions of these diminished or newly established reservations were also ceded to the United States. . . . *In this way the exterior boundaries of a reservation were further reduced. . . .*

. . . It can safely be said that it would not be to the interest of the public to restore to the Indians all undisposed public lands that at one time were in Indian ownership but afterwards became the property of the United States by outright cessions from the Indian owners. . . . [Emphasis added.]

54 I.D. 559, 560 (1934). Thus, if the 1904, 1907, and 1910 Acts effected the cession of Gregory, Tripp, and Mellette Counties to the United States rather than their availability for non-Indian settlement with no alteration of reservation status, then, in light of the opinion of the Solicitor of the Department of the Interior, the Secretary was without authority to restore any lands in those areas to the Rosebud Reservation under the Indian Reorganization Act, and, consequently, the Rosebud Sioux Tribe's title to the property would be seriously jeopardized.¹⁵

¹⁵In the years following the Solicitor's 1934 opinion, the Department of the Interior took a broader view of the types of Indian lands covered by section 3 of the Indian Reorganization Act. Indeed, under the Solicitor's current interpretation of the land restoration provision, even property formerly *ceded* by an Indian tribe apparently can be added to a reservation. *See generally*

[Footnote continued]

2. The Rosebud Sioux Tribe and many of its members no longer would be entitled to certain federal funds which can be distributed only to Indian reservation areas.

A determination that areas affected by the 1904, 1907, and 1910 Acts were removed from the Rosebud Reservation also would result in the loss of substantial amounts of federal funds to the Rosebud Sioux Tribe. At the present time, the Tribe and its members receive, quite literally, hundreds of thousands of dollars annually in monies which are earmarked explicitly for Indian reservation areas.

a. The Comprehensive Employment and Training Act of 1973¹⁶

The Comprehensive Employment and Training Act of 1973 authorizes the expenditure of federal funds for the purpose of facilitating training and employment opportunities for economically disadvantaged persons. *See generally* 29 U.S.C.A. §§801-992 (1975). Under title II of the Act, eligible "prime sponsors" may obtain monies with which to provide job training and transitional employment. 29 U.S.C.A. §841 *et seq.* (1975). Title III

Bowman v. Udall, 243 F. Supp. 672 (D. D.C. 1965). The modern construction of section 3 has its origins, however, in a Solicitor's opinion rendered on June 15, 1938—after the Order of Restoration affecting the Rosebud Sioux Tribe—and was not articulated explicitly until the 1960's. *See* 69 I.D. 195 (1962); 67 I.D. 11 (1960); 56 I.D. 330 (1938). Thus, at the time lands were restored to the Rosebud Reservation, the interpretation given to the restoration provision by the Department of the Interior clearly would not have covered property ceded to the United States by an Indian tribe.

¹⁶Act of December 28, 1973, Pub. L. No. 93-203, 87 Stat. 839; 29 U.S.C.A. §§801 *et seq.* (1975).

of the legislation was included for the specific purpose of ensuring that Indians and Alaska Natives were targeted specifically for the receipt of funds. 29 U.S.C.A. §§871 *et seq.* (1975). Finally, title VI, which implements the Emergency Jobs and Unemployment Act of 1974, Pub. L. No. 93-567, 88 Stat. 1845, provides federal monies for areas which suffer especially high rates of underemployment and unemployment. 29 U.S.C.A. §§961 *et seq.*, (1975).

Pursuant to the various titles of the Act, the Rosebud Sioux Tribe has received substantial amounts of federal funds. During fiscal years 1974, 1975, and 1976, the Tribe obtained under titles II, III (summer youth program only), and VI sums amounting to almost \$900,000.¹⁷ For the same period of time, the Tribe received, pursuant to title III provisions other than the summer youth program, funds totaling approximately \$1,000,000.¹⁸

A determination that those areas affected by the 1904, 1907, and 1910 Acts are not part of the Rosebud

¹⁷All figures relating to the Comprehensive Employment and Training Act of 1973 which are used by *amici curiae* were obtained from the Division of Indian and Native American Programs of the Department of Labor.

¹⁸The *amici curiae* Oglala Sioux Tribe and Cheyenne River Sioux Tribe also have obtained substantial sums under the Comprehensive Employment and Training Act of 1973. During fiscal years 1974 through 1976, the Oglala Sioux Tribe received over \$1,000,000 under titles II, III (summer youth program only), and VI, and approximately \$1,400,000 under title III provisions other than those relating to the summer youth program. For the same period, the Cheyenne River Sioux Tribe was the recipient of over \$500,000 in title II, III (summer youth program only) and VI funds, and also obtained approximately the same amount of monies under title III provisions other than those relating to the summer youth program.

Reservation ultimately would have drastic effects on the funding pattern described above. The problem is that, with the exception of monies other than those for the summer youth program under title III, funds obtained pursuant to titles II, III, and VI can be utilized only by reservation Indians. See 29 U.S.C.A. §844(a) (1975) (title II); 29 U.S.C.A. §962(e) (1975) (title VI); 29 C.F.R. §§96.3, 96.42 (1975) (title II); 29 C.F.R. §97.4 (1975) (summer youth program in title III); 29 C.F.R. §§99.3, 99.93 (1975) (title VI). At the present time the Department of Labor treats the Rosebud Reservation as constituting all or parts of Gregory, Tripp, Mellette, Todd, and Lyman Counties, South Dakota, for purposes of determining eligibility for monies under the aforementioned titles. If the counties of Gregory, Tripp, and Mellette are considered outside the Reservation, however, a significant portion of the almost \$500,000 annually which the Tribe now receives under titles II, III, and VI will be eliminated.¹⁹

¹⁹The Rosebud Sioux Tribe, of course, could attempt to make up its title II, III, and VI losses by applying for funds through title I of the Act, which authorizes the distribution of monies to state and local governments for job training and employment opportunities. The special Indian provisions in title II, III, and VI, however, were included in the legislation for the purpose, *inter alia*, of ensuring that Indian tribes would not be required to seek funds from state and local agencies, which historically often have been something less than responsive to applications from tribes. See generally H.R. CONF. REPT. NO. 93-737, 93rd Cong., 1st Sess. (1973); S. CONF. REPT. NO. 93-636, 93rd Cong., 1st Sess. (1973); H.R. REPT. NO. 93-659, 93rd Cong., 1st Sess. (1973); S. REPT. NO. 93-304, 93rd Cong., 1st Sess. (1973).

b. Public Works and Economic Development Act of 1965²⁰

Pursuant to title I of the Public Works and Economic Development Act of 1965, the Economic Development Administration of the Department of Commerce administers public works direct and supplementary grants in areas of substantial and persistent unemployment. *See generally* 42 U.S.C.A. §§3121-3226 (1973). During fiscal years 1967 through 1976, the Rosebud Sioux Tribe received, under the provisions of the Act, well over \$1,000,000 for public works projects benefiting all areas of the Rosebud Reservation, including those parts of the Reservation affected by the 1904, 1907, and 1910 Acts.²¹

The Public Works and Economic Development Act of 1965, however, indicates quite clearly that funds may be given only for projects located on Indian property:

...The Secretary shall designate as 'redevelopment areas'—

....

(3) those additional Federal or State Indian reservations or trust or restricted Indian-owned land areas which the Secretary, after consultation with the Secretary of the Interior or an appropriate state agency, determines manifest the greatest degree of economic distress on the basis of unemployment and income statistics and other appropriate evidence of economic underdevelopment. . . .

²⁰Act of August 26, 1965, Pub. L. No. 89-136, 79 Stat. 552; 42 U.S.C.A. §§1321 *et seq.* (1973).

²¹During the same period of time *amici curiae* Oglala Sioux Tribe and Cheyenne River Sioux Tribe received approximately \$2,500,000 each.

42 U.S.C.A. §3161(a)(3) (1975). *Accord*, 13 C.F.R. §§302.4, 305.5, 305.22(b) (1976). Thus, the holding that Gregory, Tripp, and Mellette Counties are not located within the exterior boundaries of the Rosebud Reservation would pose an obvious threat to the continued funding of needed public works projects benefiting the Rosebud Sioux Tribe in those areas.

c. The Act of April 11, 1970²²

Pursuant to the provisions of the Act of April 11, 1970, the Secretary of Agriculture is authorized to make loans to Indian tribes to facilitate their acquisition of additional lands within reservation boundaries. Specifically, the 1970 Act provides the following:

The Secretary of Agriculture is authorized to make loans from the Farmers Home Administration Direct Loan Account . . . and to make and insure loans . . . to any Indian tribe recognized by the Secretary of the Interior or tribal corporation established pursuant to the Indian Reorganization Act . . . which does not have adequate uncommitted funds, to acquire lands or interests therein *within the tribe's reservation as determined by the Secretary of the Interior*, or within a community in Alaska incorporated by the Secretary pursuant to the Indian Reorganization Act, for use of the tribe or the corporation or the members of either. [Emphasis added.]

25 U.S.C.A. §488 (1976 Supp.). No doubt possibly can exist that funds distributed under the foregoing statute can be utilized by an Indian tribe solely for the purpose

²²Act of April 11, 1970, Pub. L. No. 91-229, 84 Stat. 120; 25 U.S.C.A. §488 (1976 Supp.).

of purchasing additional lands within its "reservation."²³

Furthermore, the question whether the disestablishment of Gregory, Tripp, and Mellette Counties would affect the Rosebud Sioux Tribe's entitlement to funds under the 1970 Act has passed beyond the academic stage. In November, 1975 the Department of Agriculture informed the Tribe that, as a result of the Eighth Circuit's decision in the *Rosebud Sioux Tribe* case, funds distributed under 25 U.S.C.A. §488 no longer could be used by the Tribe to purchase property outside Todd County, South Dakota.

d. The Housing Act of 1949²⁴ and the Housing and Urban Development Act of 1968²⁵

Pursuant to the provisions of the Housing Act of 1949 and the Housing and Urban Development Act of 1968, the Secretary of Housing and Urban Development is authorized to provide funds to "local public agencies" to be used for the construction of housing. *See generally* 42 U.S.C.A. §§1452, 1453 (1969). Section 1460(h) of title 42 of the United States Code defines the term "local public agency" in the following manner:

²³During fiscal year 1974 *amicus curiae* Cheyenne River Sioux Tribe received funds in the amount of approximately \$1,000,000 for the acquisition of additional lands, and in fiscal year 1975 *amicus curiae* Oglala Sioux Tribe applied for, and recently has finalized, a loan of \$3,000,000. The Rosebud Sioux Tribe also filed an application for funds totaling \$1,000,000 in fiscal year 1975.

²⁴Act of July 15, 1949, ch. 388, 63 Stat. 413, *as amended*, 42 U.S.C.A. §§1441 *et seq.* (1969).

²⁵Act of August 1, 1968, Pub. L. No. 90-448, 82 Stat. 602; 42 U.S.C.A. §§1441a *et seq.* (1963).

... 'Local public agency' means any State, county, municipality, or other governmental entity or public body, or two or more such entities or bodies, authorized to undertake the project for which assistance is sought. The 'State' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and Trust Territory of the Pacific Islands, the territories and possessions of the United States, and *Indian tribes, bands, groups, and nations, including Alaska Indians, Aleuts, and Eskimos, of the United States.* [Emphasis added.]

42 U.S.C.A. §1460(h) (1976 Supp.). As a practical matter, the Department of Housing and Urban Development heretofore has implemented the foregoing statutory provision by making grants to an Indian tribe only for projects located on lands over which the tribe exercises jurisdiction.

If a determination is made that the 1904, 1907, and 1910 Acts disestablished the Gregory, Tripp, and Mellette County portions of the Rosebud Reservation, then the Rosebud Sioux Tribe, in all likelihood, will be unable, in the future, to obtain federal housing funds for the benefit of any tribal members who reside in an area affected by surplus lands legislation. The obvious reason for this conclusion is that if property opened to settlement by surplus lands legislation is not a part of the Reservation, it is highly doubtful that the Tribe functions as a "local public agency", within the meaning of the federal housing laws, in the areas affected by the 1904, 1907, and 1910 Acts.

e. Crime Control Act of 1973²⁶

Pursuant to the provisions of the Crime Control Act of 1973, the Law Enforcement Assistance Administration of the Department of Justice has the authority to distribute funds for planning grants, and for law enforcement and criminal justice purposes, to "units of general local government". See generally 42 U.S.C.A. §§ 3731, 3750 (1973). Under 42 U.S.C.A. § 3781 the term "unit of general local government" is defined in the following manner:

... 'Unit of general local government' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, *an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior* [Emphasis added.]

42 U.S.C.A. § 3781(d) (1973). In implementing provisions of the Crime Control Act of 1973, the Law Enforcement Assistance Administration has awarded grants to Indian tribes only for projects located in areas over which the tribes exercise criminal jurisdiction.²⁷

If Gregory, Tripp, and Mellette Counties are treated as no longer being within the boundaries of the Rosebud Reservation, the Rosebud Sioux Tribe might well be prohibited from utilizing funds under the 1973 Act for projects in the opened portion of the Reservation. As *amici curiae* have emphasized above,²⁸ a determination

²⁶Act of August 6, 1973, Pub. L. No. 93-83, 87 Stat. 197; 42 U.S.C.A. §§ 3711 *et seq.* (1973).

²⁷During fiscal year 1976 the Rosebud Sioux Tribe received almost \$70,000 in funds from the Law Enforcement Assistance Administration. For the same period *amici curiae* Oglala Sioux Tribe and Cheyenne River Sioux Tribe were awarded monies which totaled, respectively, \$435,000 and \$25,000.

²⁸See text *supra*, at 23-27.

that the 1904, 1907, and 1910 Acts effected disestablishment may mean that the Tribe no longer exercises criminal jurisdiction in Gregory, Tripp, and Mellette Counties, or, at the very least, that such jurisdiction has been limited drastically.

The foregoing discussion demonstrates that a decision holding the Gregory, Tripp, and Mellette County portions of the Rosebud Reservation were terminated by the 1904, 1907, and 1910 Acts would have significant consequences for the Rosebud Sioux. First, such a determination would have a debilitating impact on Rosebud Sioux culture by facilitating the extension of state jurisdiction and a concomitant reduction of federal and tribal authority. Second, the disestablishment of three-quarters of the Reservation would have profound economic implications by effecting a substantial diminution in the flow of federal funds to the Tribe.

CONCLUSION

The subsequent administrative and legislative treatment of the areas of the Rosebud Reservation opened to settlement by the 1904, 1907, and 1910 Acts confirms the conclusion that the legislation did not disestablish reservation lands located in Gregory, Tripp, and Mellette Counties, South Dakota. Furthermore, a determination that the aforementioned surplus lands acts did effect disestablishment would have undeniably, and, perhaps irreparably, deleterious effects on the social and economic life of the Rosebud Sioux Tribe and its members.

For the foregoing reasons, *amici curiae* respectfully submit that the judgment of the United States Court of Appeals be reversed.

Respectfully submitted,

ARTHUR LAZARUS, JR.

600 New Hampshire Ave., N.W.
Washington, D.C. 20037

Attorney for *Amicus Curiae*.

Of Counsel:

W. RICHARD WEST, JR.

AUG 9 1976

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,
Respondents.

**BRIEF AMICI CURIAE FOR THE ARAPAHOE TRIBE,
THE CONFEDERATED SALISH AND KOOTENAI
TRIBES, THE CROW TRIBE, THE HOOPA VALLEY
TRIBE, THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION, [REDACTED]**
[REDACTED]

RICHARD A. BAENEN
Counsel for Amici Curiae
1735 New York Avenue, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER

R. ANTHONY ROGERS
ALAN I. RUBINSTEIN
Of Counsel

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, ET AL.,
Respondents.

**BRIEF AMICI CURIAE FOR THE ARAPAHOE TRIBE,
THE CONFEDERATED SALISH AND KOOTENAI
TRIBES, THE CROW TRIBE, THE HOOPA VALLEY
TRIBE, THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION, AND THE NA-
TIONAL CONGRESS OF AMERICAN INDIANS, INC.**

STATEMENT OF INTEREST

The tribal entities filing this brief, the Arapahoe Tribe of the Wind River Reservation, Wyoming, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the Crow Tribe of the Crow Reservation, Montana, the Hoopa Valley Tribe of the Hoopa Valley Reservation, California, and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, are federally recognized Indian tribes which reside upon and govern their members on their respective reserva-

tions. The National Congress of American Indians is a non-profit association of some 147 Indian tribes organized to promote the interest of American Indians. Petitioner and respondents have consented to the filing of this brief, as evidenced by appropriate letters of consent which have been filed with the Court.

The question of the continued existence of the established boundaries of Indian reservations and of the ability of Indian tribes to exercise jurisdiction over the property and members of their reservation is important to all American Indian tribes, some of whose reservations might be affected by the decision of this Court.

ARGUMENT

1. The Decision In Any Case Involving The Disestablishment Of An Indian Reservation Must Be Guided By The Principles Of Federal Power of Pre-Emption.

In *DeCoteau v. District County Court*, 420 U.S. 425 (1975)¹ the Court seemed disposed to view its task in cases questioning the continued existence of Indian reservation status as one confined to an analysis of an ancient act of Congress and the circumstances surrounding its enactment. *DeCoteau v. District County Court*, *supra* at 445. It is not surprising, therefore, that in decisions subsequent to *DeCoteau*, the lower courts set their focus on isolated statutes to support determinations of reservation status.²

¹ Together with *Erickson v. United States ex rel. Feather*, No. 73-1500.

² Pending cases challenging the continued existence of Indian reservations are *United States v. Bird Horse* (No. 76-1344), together with *United States v. Long Elk* (Nos. 76-1385/1391) (8th Cir.), (the Standing Rock Reservation of North and South Dakota); *United States ex rel. Cook v. Parkinson*, 525 F.2d 120 (8th Cir. 1975), petition for writ of *certiorari* pending, No. 75-5867 (Pine Ridge Reservation, South Dakota); *Stanley v. Waddell*, Supreme

These subsequent decisions, in the opinion of your *amici*, result from a general misunderstanding of the scope and sweep of federal power over Indian affairs.

The United States exercises plenary and exclusive power over Indian affairs by virtue of the power of pre-emption. *Bryan v. Itasca County*, — U.S. —, 96 S.Ct. 2102, 2105 n.2 (1976); *Moe v. Confederated Salish and Kootenai Tribes*, — U.S. —, 96 S.Ct. 1634, 1641-42 n.13 (1976); *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 172 (1973).

Federal plenary or pre-emptive power, therefore, is the basis of Indian law. Any review of the current status of those subject to that power must take into account that the federal policy towards Indians has fluctuated between hostility, neglect, beneficent protection, and self-determination. For example, the congressional policy on allotments, found in the General Allotment Act of 1887, "was repudiated in 1934 by the Indian Reorganization Act. . . ." *Mattz v. Arnett*, 412 U.S. 481, 496 n.18 (1973), quoted in *Moe v. Confederated Salish and Kootenai Tribes*, *supra* at 1644.

In 1954, there was a congressional policy to terminate federal supervision and control over Indian affairs on certain reservations³ and Congress included within the ambit of its policy at that time the Menominee Tribe of Wisconsin. Act of June 17, 1954, 68 Stat. 250, 25 U.S.C. § 891 *et seq.* However, 19 years later Congress reversed that policy and undid Menominee termination by the Act of December 22, 1973, 87 Stat. 770, 25 U.S.C. § 903 *et seq.*⁴

Court, State of South Dakota (Cheyenne River Reservation, South Dakota).

³ See, e.g., Klamath Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 *et seq.*

⁴ Congress reasserted federal jurisdiction because of the disastrous effects termination had on the Menominees. See generally

Similarly Congress, by the Act of August 15, 1953, 67 Stat. 588, 28 U.S.C. § 1360, permitted states unilaterally to extend criminal jurisdiction over Indians on reservations. Act of August 15, 1953, 67 Stat. 588, 18 U.S.C. § 1162. However, 15 years later, by the Act of April 11, 1968, 82 Stat. 78, 25 U.S.C. § 1321-22, Congress amended the earlier act, reversed its policy, and conditioned any extension of state jurisdiction on consent by the Indians. See *Bryan v. Itasca County*, *supra*.⁵

Therefore, in any case involving the status of a reservation, it is necessary to review not only the intent of Congress behind the specific legislation that allegedly resulted in disestablishment, but also how Congress continued thereafter to exercise its plenary power toward that reservation.

2. Federal Plenary Power Over Indian Affairs Requires A Review Of The Contemporary As Well As Historical Facts In Determining If A Reservation Is Disestablished.

Your *amici*, therefore, suggest that in any case involving a question of reservation status, two investigations must be made. The first is to determine whether or not the congressional act alleged⁶ to have disestablished the

S. Rep. No. 93-604 and H.R. Rep. No. 93-572, 93d Cong., 1st Sess. (1973). As stated in the Senate Report at page 3, termination of federal supervision "brought the Menominee people to the brink of economic, social, and cultural disaster."

⁵ See also cases such as *Oklahoma Tax Comm'n v. Texas Co.*, 336 U.S. 342, 365-66 (1949), and *Board of Comm'rs v. Seber*, 318 U.S. 705, 717-18 (1943), which have held that Congress may, by affirmative action, withdraw lands previously held subject to state taxation, and thereupon create specific tax immunities for the benefit of the subsequent Indian grantee.

⁶ Inevitably the dispute is between an Indian and a State or one of its political subdivisions. See, e.g., *DeCoteau v. District County Court*, *supra* (state jurisdiction over neglected children), and, *Erickson v. United States ex rel. Feather*, companion case (state criminal jurisdiction over Indians); *Mattz v. Arnett*, 412 U.S. 481

reservation does in fact evidence the required clear intent on the part of Congress. *United States v. Celestine*, 215 U.S. 278 (1909). If so, then a second inquiry must be made to determine if Congress, in the continuing exercise of its plenary power over Indian affairs, either *de facto* or *de jure* changed its policy, as it can and so often does, and reversed its earlier decision to disestablish the particular reservation. This inquiry is necessary because a congressional decision at the turn of the century to disestablish a reservation is not an irrevocable death warrant.

The Court apparently has left the door open to this type of inquiry. In *DeCoteau v. District County Court*, *supra*, the Court did not treat the question of reservation status against the background of federal pre-emption or Congress' continuing power over Indians, and the Court stated: "But we cannot rewrite the 1889 Agreement and the 1891 statute." (420 U.S. at 447.) Review of the full course of congressional policy towards Indians and their reservations does not, of course, require a rewriting of a statute by the Court, but a determination whether Congress rewrote it. To the extent the Court in *DeCoteau* did look to subsequent federal policy, the Court addressed the question of who had been exercising jurisdiction over the area in dispute and noted that "state jurisdiction over the ceded . . . lands went virtually unquestioned until the 1960's." (420 U.S. at 442.) Then, in reviewing the prior holding in *Mattz v. Arnett*, *supra*, the Court noted in connection with the statute under consideration in *Mattz* that the Department of Interior consistently regarded the Klamath River Reservation as a continuing

(1973) (state jurisdiction over Indian fishing rights); *Seymour v. Superintendent*, 368 U.S. 351 (1962) (state criminal jurisdiction over Indians).

one, despite the 1892 legislation,⁷ while in the *DeCoteau* case before it "the surrounding circumstances are fully consistent with an intent to terminate . . . and inconsistent with any other purpose. (420 U.S. at 448).

Mattz too demonstrated an openness to subsequent inquiry when the Court noted⁸ that "[a]lthough subsequent legislation usually is not entitled to much weight in construing earlier statutes . . . it is not always without significance. . . ." citing *Seymour v. Superintendent*, 368 U.S. 351, 356-57 (1962). (412 U.S. at 481 n.25). The task of subsequent inquiry urged by your *amici*, however, would not address the understanding by a later Congress of an earlier enactment, but would address any revised policy of Congress and its effect.

Your *amici* suggests, therefore, that congressional policy towards Indians, their affairs and their lands, must be reviewed in questions involving the status of a reservation, as that policy is reflected in congressional acts and administrative actions that are implied⁹ or explicitly ~~im~~ proved by Congress.

⁷ The Court stated in *Mattz*, *supra* at 505:

"Finally, our conclusion that the 1892 Act did not terminate the Klamath River Reservation is reinforced by repeated recognition of the reservation status of the land after 1892 by the Department of Interior and by Congress. In 1904 the Department, in *Crichton v. Shelton*, 33 I.D. 205, ruled that the 1892 Act reconfirmed the continued existence of the reservation. In 1932 the Department continued to recognize the Klamath River Reservation, albeit as part of the Hoopa Valley Reservation, and it continues to do so today. And Congress has recognized the reservation's continued existence by extending the period of trust allotments for this very reservation by the 1942 Act, described above, 25 U.S.C. § 348(a), and by restoring to tribal ownership certain vacant and undisposed-of ceded lands in the reservation by the 1958 Act, *supra*." (Footnotes omitted).

⁸ *Mattz v. Arnett*, *supra* at 505 n.25.

CONCLUSION

For the reasons stated, your *amici* respectfully urge this Court to reverse the decision of the United States Court of Appeals for the Eighth Circuit as urged by petitioner. In the alternative, your *amici* respectfully suggest that the decision below be vacated and the case remanded in order for the Court below to consider fully any and all congressional action relating to the Rosebud Indian Reservation subsequent to enactment of the three settlement acts in issue.

Respectfully submitted,

RICHARD A. BAENEN
Counsel for Amici Curiae
1735 New York Avenue, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER

R. ANTHONY ROGERS
ALAN I. RUBINSTEIN

Of Counsel

AUG 9 1976

MICHAEL ROBAX, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE, *Petitioner,*

v.

HONORABLE RICHARD KNEIP, ET AL., *Respondents.*

On Certiorari to the United States Court of Appeals
for the Eighth Circuit

BRIEF OF AMICI CURIAE

of

The National Congress of American Indians
The Assiniboine and Sioux Tribes of the Fort Peck
Indian Reservation, Montana
The Shoshone Tribe of the Wind River Reservation, Wyoming
The Sisseton and Wahpeton Sioux Tribe of the
Devils Lake Reservation, North Dakota
The Standing Rock Sioux Tribe of North Dakota and South Dakota

RICHARD B. COLLINS
ROBERT S. PELCYGER
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, Colorado 80302
Telephone: (303) 447-8760
Counsel for Amici Curiae

August 1976

TABLE OF CONTENTS

	Page
MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE	1
INTEREST OF AMICI CURIAE	2
SUMMARY OF ARGUMENT	6
ARGUMENT	10
CONGRESS INTENDED TO TERMINATE THE OPENED PORTIONS OF THE ROSEBUD RESERVATION, BUT ONLY AFTER EXPIRATION OF THE TRUST PERIOD ON THE INDIAN ALLOTMENTS	10
A. Introduction	10
B. All the Allotment Statutes Contemplated the Eventual Assimilation of Indians, But the Reservation System Continued in Force	12
C. When Reservation Lands Are Merely Opened to Uncertain Future Sales, the Indians Retain Beneficial Ownership Until the Lands Are Actually Sold and Paid For	18
D. The Court of Appeals' Stated Grounds for Its Finding of Intent To Terminate Will Not Withstand Analysis	23
(1) The Cession Language	24
(2) The References to the Diminished Reservation	25
(3) School Lands	30
E. There Is No Sound Basis for a Finding That Congress Intended Immediate Termination of the Opened Portions of Rosebud	30
CONCLUSION	32

TABLE OF AUTHORITIES

CASES:

Ash Sheep Co. v. United States, 252 U.S. 159 (1920) ..	21
Bates v. Clark, 95 U.S. 204 (1877)	25, 26, 27
Bryan v. Itasca County, — U.S. — (No. 75-5027, June 14, 1976, 44 U.S.L.W. 4832)	29
Buster v. Wright, 135 F. 947 (8th Cir. 1905)	27
Clairmont v. United States, 225 U.S. 551 (1912)	26
DeCoteau v. District County Court, 420 U.S. 425 (1975)	2, 6, 7, 10, 11, 18, 19, 20, 21, 22
Dick v. United States, 208 U.S. 340 (1908)	26, 27, 29
In re Heff, 197 U.S. 488 (1905)	15, 16
Hollister v. United States, 145 F. 773 (8th Cir. 1906)	26, 28
Kills Plenty v. United States, 133 F.2d 292 (8th Cir. 1943), <i>cert. denied</i> , 319 U.S. 759	27
Mattz v. Arnett, 412 U.S. 481 (1973)	<i>passim</i>
Minnesota v. Hitchcock, 185 U.S. 373 (1902)	7, 8, 9, 12, 20, 21, 24, 29, 30
Moe v. Confederated Salish & Kootenai Tribes, — U.S. —, 48 L.Ed.2d 96 (1976)	9, 17, 18, 28
Rosebud Sioux Tribe v. Kneip, 521 F.2d 87 (8th Cir. 1975)	19, 23, 30
Seymour v. Superintendent, 368 U.S. 351 (1962) ..	<i>passim</i>
State ex rel. Bokas v. District Court, 128 Mont. 37, 270 P.2d 396 (1954)	3
United States v. Bird Horse, Cr. 75-47 (D.N.Dak.), <i>appeal pending</i>	5
United States v. Burland, 441 F.2d 1199 (9th Cir. 1971), <i>cert. denied</i> , 404 U.S. 842	3
United States v. Celestine, 215 U.S. 278 (1909)	13, 27
United States ex rel. Condon v. Erickson, 478 F.2d 684 (8th Cir. 1973)	5, 27
United States v. LaPlant, 200 F. 92 (D.S.Dak. 1911)	26, 27
United States v. Long Elk, 410 F. Supp. 1174 (D.S.Dak. 1976), <i>appeal pending</i>	5
United States v. Mazurie, 419 U.S. 544 (1975)	4
United States v. Nice, 241 U.S. 591 (1916)	15, 16, 21
United States v. Pelican, 232 U.S. 442 (1914)	21

Table of Authorities Continued

Page

STATUTES AND TREATIES:

Act of July 22, 1790, ch. 33, 1 Stat. 137	26
Treaty of February 19, 1867, 15 Stat. 505	3
Treaty of April 29, 1868, 15 Stat. 635	4
Treaty of July 3, 1868, 15 Stat. 673	4
Act of June 15, 1880, ch. 223, 21 Stat. 199	12
General Allotment Act of 1887, ch. 119, 24 Stat. 388, <i>as amended</i> , 25 U.S.C. §§ 331-358	6, 10, 12, 15, 16, 28
Act of May 1, 1888, ch. 213, 25 Stat. 113	3
Act of March 2, 1889, ch. 405, 25 Stat. 888	4
Free Homesteads Act of 1900, ch. 479, 31 Stat. 179 ..	19
Act of March 2, 1901, ch. 808, 31 Stat. 950	20, 30
Act of April 23, 1904, ch. 1484, 33 Stat. 254	2, 3, 12, 17, 25, 31
Act of April 23, 1904, ch. 1495, 33 Stat. 302	17
Act of April 27, 1904, ch. 1620, 33 Stat. 319	3
Act of March 3, 1905, ch. 1452, 33 Stat. 1016	4
Burke Act. ch. 2348, 34 Stat. 182 (1906)	15, 16
Act of March 2, 1907, ch. 2536, 34 Stat. 1230	2, 3, 4, 5, 12, 14, 25
Act of May 29, 1908, ch. 218, 35 Stat. 460	5
Act of May 30, 1908, ch. 237, 35 Stat. 558	3
Act of May 30, 1910, ch. 260, 36 Stat. 448	2, 3, 4, 5, 8, 12, 22, 24, 25, 29, 31
Act of February 14, 1913, ch. 54, 37 Stat. 675	5
Act of June 28, 1932, ch. 284, 47 Stat. 336	27
Indian Reorganization Act of 1934, <i>as amended</i> , 25 U.S.C. §§ 461-479	7, 10, 21
18 U.S.C. § 1151	9, 24, 28
25 U.S.C. § 348	17

	Page
25 U.S.C. § 349	15, 16, 28
25 U.S.C. § 391	16
25 U.S.C. § 461	12
25 U.S.C. § 462	16
25 U.S.C. § 463	21
25 U.S.C. § 476	23
ADMINISTRATIVE AND LEGISLATIVE MATERIALS:	
25 C.F.R. Appendix	16
18 Cong. Rec. 189, 225 (Dec. 15-16, 1886, 49th Cong. 2d Sess.)	16
54 I.D. 559 (1934)	19, 21
56 I.D. 330 (1938)	21
58 I.D. 203 (1942)	21
OTHER:	
F. Cohen, Handbook of Federal Indian Law (1942 ed., 1971 reprint, U.N.Mex. Press)	21, 27
Comment, New Town et al.: The Future of an Illu- sion, 18 S.Dak. L.Rev. 85 (1973)	19, 23
1906 Report of the Commission on Indian Affairs	15, 16

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE, *Petitioner,*

v.

HONORABLE RICHARD KNEIP, ET AL., *Respondents.*

On Certiorari to the United States Court of Appeals
for the Eighth Circuit

MOTION FOR LEAVE TO FILE BRIEF

and

BRIEF OF AMICI CURIAE

of

The National Congress of American Indians
The Assiniboine and Sioux Tribes of the Fort Peck
Indian Reservation, Montana
The Shoshone Tribe of the Wind River Reservation, Wyoming
The Sisseton and Wahpeton Sioux Tribe of the
Devils Lake Reservation, North Dakota
The Standing Rock Sioux Tribe of North Dakota and South Dakota

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

The National Congress of American Indians; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Shoshone Indian Tribe of the Wind River Reservation, Wyoming; the Sisseton and Wahpeton Sioux Tribe of the Devils Lake Reser-

vation, North Dakota; and the Standing Rock Sioux Tribe of North Dakota and South Dakota respectfully move for leave to file a brief as amici curiae in this case in support of petitioner, which brief is set out herein following this motion. The written consent of petitioner is filed herewith. The consent of respondents was sought, and respondents have informed amici that they intend to file with the Court a blanket consent to all timely amicus curiae briefs.

INTEREST OF AMICI CURIAE

The issue before the Court is whether any part of the Rosebud Sioux Indian Reservation was terminated by the allotment and surplus land acts adopted in 1904, 1907 and 1910. The law interpreting this type of statute is now at a crossroads. In its previous decisions in *Seymour*,¹ *Mattz*,² and *DeCoteau*,³ the Court has interpreted allotment and surplus land statutes, but the precise terms of the statutes interpreted in each of those cases have not been widely used in other enactments. By contrast, the terms in one or another of the three Rosebud Acts are nearly identical to the terms of numerous other allotment and surplus land statutes affecting many tribes across the United States. Each of the amici tribes is affected by a statute almost identical in form and language with one or another of the Rosebud Acts. All of the Fort Peck Reservation, all of the Devils Lake Reservation, all of the Standing Rock Reservation, and over two-thirds of the Wind River Reservation, were opened by such statutes and would

¹ *Seymour v. Superintendent*, 368 U.S. 351 (1962).

² *Mattz v. Arnett*, 412 U.S. 481 (1973).

³ *DeCoteau v. District County Court*, 420 U.S. 425 (1975).

thus be in jeopardy of termination under the reasoning of the court below.

1. The National Congress of American Indians is a non-profit association of more than one hundred Indian tribes throughout the United States, maintaining offices in the District of Columbia. Its purpose is to promote the interest of American Indians through collective action. Many of its member tribes are potentially affected by the result in this case.

2. The Fort Peck Reservation was established by the Act of May 1, 1888, ch. 213, 25 Stat. 113. In 1907, the same Inspector McLaughlin who dealt with the Rosebud Sioux negotiated an agreement with the Assiniboine and Sioux Tribes opening all of the unallotted land on the reservation to settlement. The agreement was not ratified, but Congress enacted the Act of May 30, 1908, ch. 237, 35 Stat. 558, opening the unallotted and unreserved tribal lands for sale to settlers. The 1908 Fort Peck Act is similar in format to the 1907 and 1910 Rosebud Acts. Fort Peck has been assumed to be unterminated. *State ex rel. Bokas v. District Court*, 128 Mont. 37, 270 P.2d 396 (1954); *United States v. Burland*, 441 F.2d 1199 (9th Cir. 1971), *cert. denied*, 404 U.S. 842.

3. The Devils Lake Indian Reservation in North Dakota was established by the Treaty of February 19, 1867, 15 Stat. 505. The same Inspector McLaughlin who dealt with the Rosebud Indians negotiated an agreement with the Devils Lake Sioux for the sale of unallotted lands on the reservation. Congress did not ratify this agreement but instead enacted the Act of April 27, 1904, ch. 1620, 33 Stat. 319. This Act was passed four days after the 1904 Rosebud Act and in general contains the same language and provisions.

4. The Wind River Indian Reservation in Wyoming was established by the Treaty of July 3, 1868, 15 Stat. 673. It is occupied by the Shoshone and Arapaho Tribes; the Arapaho Tribe is separately represented. A brief history of the reservation is found in the opinion of this Court in *United States v. Mazurie*, 419 U.S. 544, 546 (1975).

In 1904 the same Inspector McLaughlin negotiated an agreement with the Wind River Indians in much the same form as the 1907 and 1910 Rosebud Acts. The Act of March 3, 1905, ch. 1452, 33 Stat. 1016, ratified the agreement with certain amendments. While this act opened about two-thirds of the reservation, relatively little of the land was entered by settlers because it was not suitable for homesteading. Most of the unsold land was later restored to the Tribes. The result is that today about 83% of the land within the reservation boundaries—including the opened two-thirds portion—is Indian owned. About 7% is federally owned and 10% is held in fee simple, mostly by non-Indians.

5. The Standing Rock Sioux Tribe is a sister tribe of the Rosebud Sioux. Both are part of the Sioux Nation that owned the Great Sioux Reservation established by the Treaty of April 29, 1868, 15 Stat. 635. Standing Rock and Rosebud were two of the six Sioux Tribes for whom separate reservations were made in the Act of March 2, 1889, ch. 405, 25 Stat. 888. The Standing Rock Reservation is located in both the States of North and South Dakota.

The same Inspector McLaughlin twice came to the Standing Rock Sioux Tribe. As a consequence, two allotment and surplus land statutes opened up all the unallotted land on the Standing Rock Reservation. Act

of May 29, 1908, ch. 218, 35 Stat. 460; Act of February 14, 1913, ch. 54, 37 Stat. 675. In form and language these statutes are practically the same as the 1907 and 1910 Rosebud Acts.

The 1908 Act fixed a boundary line running north and south approximately through the center of the reservation and opened to settlement the western half of the reservation in both states. Five years later the 1913 Act opened the eastern half of the Standing Rock Reservation in both states.

The 1908 Act included both the western half of the Standing Rock Reservation and a portion of the Cheyenne River Reservation. In 1973 the Eighth Circuit Court of Appeals held that the 1908 Act did not terminate any part of the Cheyenne River Reservation. *United States ex rel. Condon v. Erickson*, 478 F.2d 684 (8th Cir. 1973).

The 1913 Act, which opened the eastern half of the Standing Rock Reservation, has been construed by the federal district courts for North Dakota and South Dakota. These courts have split on the question whether this act terminated the eastern half of the reservation. That portion of the eastern half of the reservation in South Dakota was held not to be a reservation in *United States v. Long Elk*, 410 F. Supp. 1174 (D.S.Dak. 1976), *appeal pending*. The part of the eastern half of the reservation in North Dakota was held to be a reservation in *United States v. Bird Horse*, Cr. 75-47 (D. N.Dak.), *appeal pending*. A dictum in the *Long Elk* case casts doubt upon the present validity of the holding in *United States ex rel. Condon v. Erickson*, *supra*, concerning the western half of the reservation, at least that portion in South Dakota.

6. As noted, all of the acts concerning amici tribes resemble one or another of the Rosebud Acts. One feature that all eight of these statutes have in common is that the United States expressly disclaimed any obligation to purchase or to find purchasers for any of the lands opened to homesteading and settlement. In each case, the United States expressly assumed the role of trustee to find purchasers for the opened lands.

SUMMARY OF ARGUMENT

The three Rosebud Acts at issue here, and over one hundred others, were patterned after the General Allotment Act of 1887. All the allotment acts contemplated the eventual assimilation of the Indians and the termination of their reservations. But this was not to occur until the end of the trust period on the Indians' allotments, until which time the reservation system was to continue. The trust period was originally intended to last twenty-five years, but in 1934 the allotment policy was repudiated, and the trust period has been extended on all trust allotments. Thus the intent of the allotment acts has never been carried out.

Many of the allotment acts also provided for the opening of "surplus" reservation lands for sale to homesteaders. The surplus land sales provisions are not inconsistent with continued reservation status; in the *Mattz* and *Seymour* cases, the Court found that areas opened to homesteaders nevertheless remained within the boundaries of those Indian reservations. However, in the *DeCoteau* case, the Court found that an outright sale of all unallotted lands for present consideration terminated the reservation. As stated above, all three statutes contemplated the eventual termination of the Indians; the essential difference between the *DeCoteau*

statute and the *Mattz* and *Seymour* statutes was not whether termination was to occur, but when it was to occur.

In the *DeCoteau* opinion, the Court reaffirmed its holdings in *Mattz* and *Seymour*, and based the decision on differences between the statutes involved. The first and most prominent distinction mentioned was between the outright sale for present consideration of the opened lands in *DeCoteau*, and the opening arrangement in *Mattz* and *Seymour*. In the latter case the Indians' surplus lands were made available for sale to homesteaders, but the Indians received payment only when and if the homestead entry was made and paid for. This same distinction had been the basis of the Court's 1902 decision in *Minnesota v. Hitchcock*, 185 U.S. 373 (1902). There the Court construed the arrangement opening Indian lands to uncertain future sales to continue the opened lands as Indian trust lands until actually sold and paid for; the lands did not become public domain. The Interior Department has consistently relied on the same distinction in determining which lands are available for restoration to tribal ownership under the Indian Reorganization Act of 1934.

In both *Mattz* and *Seymour*, where the Indians remained beneficial owners of the opened lands until actually compensated, the Court found that the reservation boundaries remained intact until the end of the trust period on the allotments. The three Rosebud Acts were based on the same arrangement. Pending sale and full payment for the lands, the Indians retained a trust interest in the opened areas. Thus to accept the result of the Court of Appeals, one must conclude that Congress intentionally left the tribe owning trust property outside the reservation.

It is conceded by respondents that Congress in enacting the three Rosebud statutes did not address the question of reservation boundaries. At that time, the importance of reservation boundaries in Indian affairs was much less than it is today for a number of reasons. Nevertheless, the Court of Appeals inferred termination of the boundaries from the legislative history and surrounding circumstances. However, the bases for the court's conclusion will not withstand analysis.

The Court minimized the importance of the distinction between a purchase for present consideration and an opening for uncertain future sales, failing to take into account the Court's decision in *Minnesota v. Hitchcock*, *supra*. The Court of Appeals instead relied on the language of cession in the three Rosebud Acts, and on the phrase "diminished reservation" in a proviso to the 1910 Act and in contemporary documents. The court also relied on the school lands sections in those acts.

The language of cession in the Rosebud Acts does not respond to the issue in this case, whether termination was to occur immediately or only after expiration of the trust period on the Indian allotments. Cession would occur only as each parcel was sold and paid for, because prior to that time the Indians were not compensated, were surely not making a gift, and the United States was not exercising its power of eminent domain.

The references to the diminished reservation likewise do not specify when such diminishment was to occur. Furthermore, such references in all probability refer to diminishment in tribal land ownership rather than reservation boundaries. Under the contemporary "title theory" of Indian country jurisdiction, each par-

cel of land was thought to lose its Indian country character upon sale to a homesteader. This rule was not authoritatively changed until the 1948 enactment of 18 U.S.C. § 1151. Thus a contemporary congressman would have thought that as each parcel was sold, it diminished the trust area, regardless of the reservation boundaries. This Court has recently used the term diminished in the same manner in *Moe v. Confederated Salish and Kootenai Tribes*, — U.S. —, 48 L.Ed.2d 96 (1976).

In relying on the school lands sections in the Rosebud Acts, the Court of Appeals failed to take into account that these sections were almost certainly a counter to this Court's decision in *Minnesota v. Hitchcock*.

On the face of the Rosebud Acts, there is no basis to infer an intent to terminate the opened areas of the reservation. Indians were not to be removed from these areas. In one area the Tribe retained the timberlands, the Government retained land in two of the areas for federal Indian agencies, schools, and missions, and the Indians continued to own the lands opened to homesteaders until such lands were actually sold and paid for, a process taking several years and leaving the Indians as trust owners of land never sold. While the Acts use words of cession, these are fully consistent with the interpretation that cession was to occur only to the extent of actual sales and payment in the future, parcel by parcel. The United States expressly disclaimed an intent to exercise its power to take the opened lands except for school sections. These statutes closely parallel the statutes construed in *Mattz* and *Seymour*.

It is clear from the historical context and legislative history that Congress was not focusing on the boundary question and that the term "diminished reserva-

tion" did not have the meaning attributed to it by the Court of Appeals.

For these reasons, none of the Rosebud Acts exhibits the clear intent to effect an immediate termination of the affected areas required by the rules set down in the decisions of this Court.

ARGUMENT

CONGRESS INTENDED TO TERMINATE THE OPENED PORTIONS OF THE ROSEBUD RESERVATION, BUT ONLY AFTER EXPIRATION OF THE TRUST PERIOD ON THE INDIAN ALLOTMENTS.

A. Introduction

The opinion of the Court of Appeals appears to pose the issue in this case as whether Congress intended to terminate the opened portions of the Rosebud Reservation by enactment of the three Rosebud Acts. Amici suggest that this is not accurate. As will be elaborated herein, all the allotment statutes patterned after the General Allotment Act intended to terminate federal protection over Indians and their property and to break up their tribal relations. However, such termination was not to occur immediately but only after all the lands were allotted and the trust period on the allotments had expired. *Mattz v. Arnett*, 412 U.S. 481, 496 (1973). The Indian Reorganization Act of 1934 reversed this policy, but eventual termination was clearly the intent of the allotment acts Congresses.

Eventual termination was equally the goal of Congress in enacting the statutes interpreted by this Court in *Mattz* and *Seymour*⁴ as well as in *DeCoteau*.⁵ The

⁴ See note 1 *supra*.

⁵ See note 3 *supra*.

same is true as well of allotment statutes not accompanied by opening of the surplus Indian lands to homesteaders. In all these cases, the allotments themselves and the Indians were to remain under federal protection for the duration of the trust period. The crucial question in these cases then is whether the land that was made available to non-Indian homesteaders was to remain within the reservation until the expiration of the trust period on the Indian allotments, or, as the state contends, the reservation was to be terminated immediately.

The difference between the *Mattz* and *Seymour* statutes and the *DeCoteau* statute is not *whether* termination was to take place, but *when* it was to take place. In *DeCoteau*, where the Indians immediately sold all interest in the ceded lands, the reservation was immediately reduced to the allotments. By contrast, in *Mattz* and *Seymour* the "surplus" lands were merely made available for uncertain future sales to settlers. Until sold and paid for, the opened lands remained Indian trust lands, with the Indians entitled to the mesne profits. In these two cases, the Court found insufficient indication of intent to terminate the reservation boundaries immediately and to reduce the area of protection to the allotments alone; rather, the reservation was to continue until the end of the trust period on the allotments.

In this critical respect the three Rosebud statutes resemble those construed in *Mattz* and *Seymour*. It is amici's position that this functional difference between an immediate cash sale and uncertain future sales is the most reliable indicator we have of Congressional intent whether termination was to occur immediately

or not until the end of the allotment trust period—a much more reliable indicator than the factors relied upon by the Court of Appeals. It is also the criterion that the Interior Department has consistently applied for many years in determining the status of opened reservations generally.

B. All the Allotment Statutes Contemplated the Eventual Assimilation of Indians. But the Reservation System Continued in Force.

In 1887 Congress enacted the General Allotment Act, ch. 119, 24 Stat. 388, *as amended*, 25 U.S.C. §§ 331-358. Between 1880 and 1934, Congress enacted more than 100 special allotment acts patterned upon the General Allotment Act but applying to particular Indian reservations.* The three Rosebud Acts at issue herein are among the latter⁷ as are the statutes involving each of the four *amici* tribes.⁸

Prior to the period of the General Allotment Act, treaties and agreements by which the United States acquired lands from Indians had customarily provided for outright cession of Indian lands for immediate consideration and removal of the Indians from the ceded areas. The General Allotment Act and its progeny brought about a significant change: the Indians were no longer to be removed. As the Court noted in *Minnesota v. Hitchcock*, 185 U.S. 373, 401-402 (1902):

* While older allotment acts and treaty provisions exist, the first act on the model of what became the General Allotment Act appears to be the Act of June 15, 1880, ch. 223, 21 Stat. 199. Allotments were, of course, prohibited after 1934. 25 U.S.C. § 461.

⁷ Act of April 23, 1904, ch. 1484, 33 Stat. 254; Act of March 2, 1907, ch. 2536, 34 Stat. 1230; Act of May 30, 1910, ch. 260, 36 Stat. 448.

⁸ Cited above under "Interest of *Amici Curiae*."

[M]uch of the legislation in respect to Indians and many of the treaties with them have contemplated simply the cession of their lands and their removal to tracts further west. . . . Of course, when the Indian tribe has been removed by treaty from one body of land to another the interest of the tribe in the land from which it has been removed ceases, and the full obligation of the government to the Indians is satisfied when the pecuniary or real-estate consideration for the cession is secured to them. But in some instances, and this is one of them, the Indians have not been removed from one reservation to another, but the government has proceeded upon the theory that the time has come when efforts shall be made to civilize and fit them for citizenship. Allotments are made in severalty, and something attempted more than provision for the material wants of the Indians.

When the Indians were removed and had no further interest in the lands ceded, it was obvious that the area acquired by the United States ceased to be an Indian reservation or Indian country. But under the 1880-1934 allotment statutes, the reservation system was to continue during the trust period on the allotments.

These allotment statutes were unquestionably intended to end the tribal organization of the Indians eventually and to withdraw federal protection from them and their property—a process which would include termination of their reservations. As the Court said in *United States v. Celestine*, 215 U.S. 278, 290 (1909):

Of late years a new policy has found expression in the legislation of Congress, —a policy which looks to the breaking up of tribal relations, the establishing of the separate Indians in individual homes, free from national guardianship, and charged with all the rights and obligations of citizens of the United States.

However, it is equally clear that assimilation was not to occur in one step, and that allotment was but the first stage of the process. In a case arising in Tripp County, South Dakota, the area that is the subject of the 1907 Rosebud Act, the Court stated:

The Act of 1889 recognized the existence of the tribe, as such, and plainly disclosed that the tribal relation, although ultimately to be dissolved, was not to be terminated by the making or taking of allotments. In the acts of March 3, 1899 (chap. 450, 30 Stat. at L. 1362), and March 2, 1907 (chap. 2536, 34 Stat. at L. 1230), that relation was recognized as still continuing, and nothing is found elsewhere indicating that it was to terminate short of the expiration of the trust period.

* * *

Upon examining the whole act, as must be done, it seems certain that the dissolution of the tribal relation was in contemplation; but that this was not to occur when the allotments were completed and the trust patents issued is made very plain. To illustrate: Section 5 expressly authorizes negotiations with the tribe, either before or after the allotments are completed, for the purchase of so much of the surplus lands "as such tribe shall, from time to time, consent to sell;" directs that the purchase money be held in the Treasury "for the sole use of the tribe;" and requires that the same, with the interest thereon, "shall be at all times subject to appropriation by Congress for the education and civilization of such tribe . . . or the members thereof." This provision for holding and using these proceeds, like that of withholding the title to the allotted lands for twenty-five years, and rendering them inalienable during that period, makes strongly against the claim that the national guardianship was to be presently terminated. The two together show that the government was retain-

ing control of the property of these Indians, and the one relating to the use by Congress of their moneys in their "education and civilization" implies the retention of a control reaching far beyond their property.

United States v. Nice, 241 U.S. 591, 596, 599 (1916). More recently, the Court stated:

[The General Allotment] Act permitted the President to make allotments of reservation lands to resident Indians and, with tribal consent, to sell surplus lands. Its policy was to continue the reservation system and the trust status of Indian lands, but to allot tracts to individual Indians for agriculture and grazing. When all the lands had been allotted and the trust expired, the reservation could be abolished.

* * *

[A]llotment under the 1892 [special allotment] Act is completely consistent with continued reservation status.

Mattz v. Arnett, 412 U.S. 481, 496-497 (1973).

Congress underscored the intent of its plan by the 1906 amendment to the General Allotment Act known as the Burke Act, ch. 2348, 34 Stat. 182 (1906), now part of 25 U.S.C. § 349. Its author, Congressman Burke of South Dakota, played a prominent role in the enactment of the Rosebud Acts. The 1906 amendment expressed the disagreement of Congress with this Court's decision in *In re Heff*, 197 U.S. 488 (1905). In *Heff*, the Court had interpreted § 6 of the General Allotment Act of 1887 to remove federal liquor protection from allotted Indians immediately upon issuance of a trust patent. This decision "startled the country"

* 1906 Report of the Commissioner of Indian Affairs, page 28.

and led to the Burke Act, which specified that allotted Indians "shall be subject to the exclusive jurisdiction of the United States" until expiration of the allotment trust period. 25 U.S.C. § 349. The *Heff* case was later expressly overruled by the Court. *United States v. Nice*, *supra*, 241 U.S. at 601.

The plan of all the allotment acts was that after a suitable "apprenticeship in civic responsibilities,"¹⁰ originally contemplated to last 25 years, the federal protection of Indians and their property would come to an end. In the original draft of the General Allotment Act, this period was absolute, but it was amended prior to enactment to permit the President to extend the period in his discretion. 18 Cong. Rec. 189, 225 (Dec. 15-16, 1886, 49th Cong. 2d Sess.). *See also* 25 U.S.C. § 391.

In 1934 the policies of the allotment acts were repudiated. *Mattz v. Arnett*, *supra*, 412 U.S. at 496 n. 18. Congress ended the making of allotments and extended indefinitely the trust period on many allotments, 25 U.S.C. § 462, and the President and Congress have extended others. 25 C.F.R. Appendix. The trust periods of allotments on the Rosebud Reservation were extended for 10 years by four executive orders between 1926-1931, then indefinitely by 25 U.S.C. § 462. *Id.* For this reason, the original plan of Congress in enacting the allotment acts has never been carried out.

The General Allotment Act and many of the special allotment acts of the 1880-1934 period not only provided for allotment of tribal land in severalty to the Indians but also contemplated the sale of unallotted or

¹⁰ 1906 Report of the Commissioner of Indian Affairs, page 29.

"surplus" tribal lands to homesteaders. 25 U.S.C. § 348; *Mattz v. Arnett*, *quoted* p. 15 *supra*.

The Court has clearly held that such opening of surplus reservation lands for sale to homesteaders is in no way inconsistent with continued reservation status. "Unallotted lands were made available to non-Indians with the purpose, in part, of promoting interaction between the races and of encouraging the Indians to adopt white ways." *Mattz v. Arnett*, *supra*, 412 U.S. at 496. "The [special allotment] Act did no more than open the way for non-Indian settlers to own land on the reservation in a manner which the Federal Government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards." *Seymour v. Superintendent*, 368 U.S. 351, 356 (1962). Quite recently the Court rejected an argument that the resulting integration of Indians with settlers had the effect of eliminating reservation status, when the reservation population was only 19% Indian. *Moe v. Confederated Salish & Kootenai Tribes*, — U.S. —, 48 L.Ed.2d 96, 102-103, 108 (1976).¹¹ Respondents' similar argument regarding the racial composition of the opened areas of the Rosebud Reservation should be rejected for like reasons.

In summary, the plan of the allotment acts was to assimilate the Indians in two stages. The first stage involved the allotment in severalty of tribal land to "individualize" the Indians and make them into family farmers, together with the opening of allotted reser-

¹¹ The *Moe* case involved the Flathead Reservation in Montana. It is noteworthy that the act opening that reservation to white settlement was passed the same day as the 1904 Rosebud Act and has quite similar provisions. Act of Apr. 23, 1904, ch. 1495, 33 Stat. 302.

vation areas to white settlement to promote interaction of the races and provide white farmers as role models for the Indians. The reservation system with federal protection for the Indians was to continue during this phase.

The second phase was to be the termination of the trust and withdrawal of federal protection. The reservations would then wither away as needless anachronisms. This phase was never reached, however, because in the interim the allotment system was recognized to be a failure and was repudiated. *Moe v. Confederated Salish and Kootenai Tribes, supra*, 48 L.Ed.2d at 109-110.

C. When Reservation Lands Are Merely Opened to Uncertain Future Sales, the Indians Retain Beneficial Ownership Until the Lands Are Actually Sold and Paid For.

In *Seymour v. Superintendent, supra* and *Mattz v. Arnett, supra*, the Court ruled that the allotment and surplus land statutes at issue in those cases did not then terminate the reservation areas so opened. But in *DeCoteau v. District County Court, supra*, the Court ruled that the statute there at issue terminated the Lake Traverse Reservation in South Dakota. However, the Court forcefully stated that *Mattz* and *Seymour* remain the law, and the difference in result was traced to differences in the statutes being interpreted. 420 U.S. at 447. In the *DeCoteau* opinion, the Court noted several differences between the statute there involved and those in *Mattz* and *Seymour*. 420 U.S. at 447-449. The first and most prominent distinction in the Court's opinion in *DeCoteau* between the Lake Traverse statute and those interpreted in *Mattz* and *Seymour* was that Lake Traverse involved an outright purchase by the United States, while the *Mattz* and *Seymour* stat-

utes "benefitted the tribe only indirectly, by establishing a fund dependent on uncertain future sales of its land to settlers." 420 U.S. at 448.

This distinction between outright sale for present consideration and lands opened for uncertain future sales was called to the attention of the court below, and it purported to take it into account, although giving it little weight. *Rosebud Sioux Tribe v. Kneip*, 521 F.2d 87, 101-102 (8th Cir. 1975). That court reached its result based in part on its assumption that the arrangement whereby the Government holds the lands in trust for sales to settlers originated in 1904. 521 F.2d at 102. This is clearly wrong. The *Mattz* case involved an 1892 statute which also employed this form of opening, and the same is true of other acts scattered throughout the allotment and surplus land statute period. *Restoration of Lands Formerly Indian to Tribal Ownership*, 54 I.D. 559, 563 (1934). Six of the allotment and opening statutes listed in this Interior Solicitor's opinion pre-date 1904.¹²

¹² The Court of Appeals' error on this point traces to a law review article co-authored by one of the counsel for respondents. The article quotes legislative history in support of this contention. Comment, *New Town et al.: The Future of an Illusion*, 18 S.Dak. L.Rev. 85, 88-89, 96 (1973). The probable explanation is the existence by 1904 of the Free Homesteads Act of 1900, ch. 479, 31 Stat. 179. Under this statute had the United States purchased the Rosebud lands outright, settlers would be entitled to claim them as free homesteads, and the Government would not recover any of the consideration it paid the Indians. As this Court noted in *DeCoteau*, this was not true with regard to the 1891 statute there reviewed which purchased lands from seven tribes outright. All of these lands were to be sold to settlers to recoup the price. 420 U.S. at 439-441. Thus the overall situation in 1904 would appear to be different, even though opening of reservations in trust for uncertain future sales was not new.

One of the six statutes just referred to was construed by the Court in *Minnesota v. Hitchcock*, 185 U.S. 373 (1902), and the entire decision in that case turned on the distinction between Indian lands purchased outright and reservations opened in trust to uncertain future sales. Minnesota was entitled under its enabling act to school lands sections in the public domain. The State claimed the school lands sections within the Red Lake Indian Reservation, which had been opened to settlement with payment to the Indians only as each parcel was sold and paid for. The Court denied the State's claim, ruling that the school land sections had not become public domain, because the Indians retained an interest in the opened lands until actually sold.

Congress was certainly aware of this case, because it had waived the immunity of the United States by a special statute to allow the Court to hear any case to determine the right of a state to claim school lands within any Indian reservation or cession. Act of March 2, 1901, ch. 808, 31 Stat. 950. *Minnesota v. Hitchcock* was announced on May 5, 1902, after which date Congress surely knew the significance of the distinction between the outright purchase of Indian lands and the opening in trust of Indian lands for future sales.

As noted in the previous section, the essential difference between the allotment and surplus land statutes at issue in *Seymour* and *Mattz* and that at issue in *DeCoteau* is not whether termination was intended by Congress, but when it was intended. To be sure, this distinction has grown in importance owing to the indefinite extension of the trust period on allotments. But the focus here must be on the perspective of the Congress during the first decade of this century.

In all cases, the trust relationship was to continue as to the allotments themselves, and tribal relations were to continue, for the twenty-five year period. *Mattz v. Arnett, supra*; *United States v. Nice, supra*. The allotments themselves remained "Indian country" regardless of the status of the reservation boundaries. *United States v. Pelican*, 232 U.S. 442 (1914). But in *Mattz* and *Seymour*, the opened lands also remained Indian trust property until actually sold to and paid for by settlers. *Ash Sheep Co. v. United States*, 252 U.S. 159 (1920); *Minnesota v. Hitchcock*, 185 U.S. 373 (1902); see also F. Cohen, *Handbook of Federal Indian Law* (1942 ed., 1971 reprint, U.N.Mex. Press), pp. 334-336. The Indians retained the right to the income from these unsold lands. 58 I.D. 203 (1942). The Indians' retained interest distinguished these lands from lands purchased outright and was ruled by the Interior Department to justify restoration to the Indians of the opened trust lands, but not the sold lands, under the Indian Reorganization Act. 54 I.D. 559 (1934), interpreting 25 U.S.C. § 463. It is true as respondents urged in their final brief in opposition to certiorari (dated May 1976 at pp. 23-27) that the Interior Department avoided a decision on original reservation boundaries in 56 I.D. 330 (1938). However, boundaries were not then at issue, and in any event that was the pre-1948 era of the "title" theory of Indian country discussed *infra*. The point here is that the Indians retained a significant ownership interest in unsold lands opened for possible sale, an interest recognized by the Interior Department in determining what lands would be restored to full tribal ownership.

By contrast, in *DeCoteau v. District County Court, supra*, the Indians retained no interest whatsoever in

the ceded lands, which became public domain. 420 U.S. at 449.

Thus in both *Mattz* and *Seymour*, where the Indians were not to be removed, and they remained beneficial owners of the opened lands until actually compensated, the Court found that the reservation boundaries remained intact until the end of the trust period on the allotments. All three of the Rosebud Acts were based on the same premise: the allotted Indians remained, and the Tribe continued to have an interest in the unallotted lands until actually sold to and paid for by settlers.

Amici do not contend that lands opened for uncertain future settlement, in which the Indians retain a trust interest, must for that reason alone remain within reservation boundaries. Other factors could overcome the strong inference to be drawn from this arrangement, notably complete Indian removal from the opened area or express abolition on the face of the act. However, neither of these factors is present in any of the Rosebud Acts.

To reach the Court of Appeals' conclusion that the opened Rosebud Reservation was terminated, one must assume that Congress intended to terminate an area in which allotted Indians were to remain in trust for 25 years, in which the Rosebud Sioux Tribe was to retain a trust interest in the opened lands for some years to come, in which federal Indian agencies and schools remained, and in one case where the Tribe continued to own timber lands in trust. 1910 Act § 4. Amici contend that it requires a particularly strong showing of intent to terminate to overcome these factors. As will be set out in the next section, the circumstances surrounding the enactment of the Rosebud statutes do not support a finding of such intent.

D. The Court of Appeals' Stated Grounds for Its Finding of Intent to Terminate Will Not Withstand Analysis.

The Court of Appeals recognized the general rules governing termination cases: that Congressional intent to terminate a reservation must be expressed on the face of the act or clear from the surrounding circumstances to overcome the rule that doubtful expressions are to be resolved in favor of the Indians. 521 F.2d at 90. In the case of the allotment statutes, all of which envisioned eventual termination, the issue should be refined to require that Congressional intent to terminate immediately, rather than after the allotment trust period, be express or otherwise clear.

In regard to the Rosebud Acts, neither side in this case has been able to indicate that Congress at any time directly addressed the question of reservation boundaries. Indeed, one of the counsel for respondents in a law review comment on these Acts admits "the almost complete lack of Congressional concern with the boundary issue."¹¹

This concession is clearly correct. The difference between immediate termination and termination after the allotment trust period would have then seemed relatively unimportant, since termination was to occur after 25 years in any event. There had not yet occurred the establishment of federally-organized tribal governments under the Indian Reorganization Act of 1934, 25 U.S.C. § 476, which increased the significance of reservation boundaries. And as will be elaborated below, the then prevailing theory of federal Indian country jurisdiction depended upon land title, not on reser-

¹¹ Comment, *New Town et al.: The Future of an Illusion*, *supra* n. 12, 18 S.Dak. L.Rev. at 117 (1973).

vation boundaries alone, a theory not discarded until the 1948 enactment of 18 U.S.C. § 1151.

The boundary question received no attention, so the inquiry throughout this case has been whether termination of the boundaries could be inferred from other events.

The Court of Appeals found that termination of the opened portions of Rosebud could be inferred from the surrounding circumstances and legislative history. As noted above, that court minimized the significance of the uncertain future sales arrangement based in part on the court's mistaken view that this arrangement was new in 1904—despite the express recognition two years earlier by this Court of the importance of that distinction in *Minnesota v. Hitchcock*, *supra*.

The Court of Appeals placed principal reliance on the language of cession in the Rosebud Acts; on the reference to the “diminished reservation” in a proviso to the 1910 Rosebud Act; and on references to the “diminished reservation” and the like in contemporary documents. The court also relied on the school lands sections in the Rosebud Acts.

(1) THE CESSION LANGUAGE. While each Rosebud Act uses language of cession, this in no way answers the issue in this case. Again, the question is not whether cession was to occur but when. In the Rosebud statutes, the Indians as already noted retained an interest in the opened lands until a homestead entry was made and the land fully paid for (the payment process usually taking several years). Only after full payment would cession of each parcel occur. While the authority for the cession would trace to the statute, the cession would

occur only when the Indian interest was fully extinguished. To construe the cession terms otherwise would make the transaction into a gift until and if payment were made, a construction not to be favored under the governing rules of Indian law. (An eminent domain taking is, of course, negated by the section in each Act disclaiming any payment obligation of the United States except as to school lands. 1904 Act § 6; 1907 Act § 8; 1910 Act § 11.)

Cession under the Rosebud Acts occurred in exactly the same manner as under the *Mattz* and *Seymour* acts—piecemeal as each parcel was sold and paid for. The Court in those cases found this arrangement not to support a Congressional intent to terminate the opened reservation immediately—only after the allotment trust periods had expired.

(2) THE REFERENCES TO THE DIMINISHED RESERVATION.

The references to the diminished reservation and similar phrases likewise do not address the question of when such diminishment was to occur. Furthermore, it is probable that “diminished” referred to title to the opened lands rather than to reservation boundaries. The contemporary theory was that the Indian country authority of the United States depended upon the title to each parcel of land rather than on the location of the outer boundaries of an Indian reservation.

This “title theory” of Indian jurisdiction traces to *Bates v. Clark*, 95 U.S. 204 (1877). At that time, the statutory assertion of federal authority was over “Indian country” as that phrase had been used in the various Indian trade and intercourse acts beginning

with the Act of July 22, 1790, ch. 33, 1 Stat. 137. The single most prominent subject was liquor control, and *Bates v. Clark* was a liquor case. The *Bates* Court ruled against Indian country authority, a result that seems obvious in any event because the place where the case arose was not within any Indian reservation. But the Court chose to rest its decision on land title rather than on reservation boundaries. Indian country was defined in these terms:

The simple criterion is, that, as to all the lands thus described, it was Indian country whenever the Indian title had not been extinguished, and it continued to be Indian country so long as the Indians had title to it, and no longer. As soon as they parted with the title, it ceased to be Indian country, without any further Act of Congress, unless by the Treaty by which the Indians parted with their title, or by some Act of Congress, a different rule was made applicable to the case.

95 U.S. at 208.

Bates v. Clark was followed and relied upon regarding fee patented lands within an opened reservation in *Dick v. United States*, 208 U.S. 340 (1908), and regarding a railroad right-of-way across a reservation in *Clairmont v. United States*, 225 U.S. 551 (1912).

In a case arising on the Rosebud Reservation, the Eighth Circuit cited *Bates v. Clark*, *supra*, in stating the court's view that federal court criminal jurisdiction on an Indian reservation depended upon title to each parcel of land. *Hollister v. United States*, 145 F. 773 (8th Cir. 1906) (dictum). This dictum was quoted and relied upon in *United States v. LaPlant*, 200 F. 92 (D.S.Dak. 1911) to deny federal jurisdiction over a crime occurring on opened lands on the Cheyenne River

Reservation in South Dakota. The court in *LaPlant* reasoned that "checkerboarding" of a reservation's jurisdiction would be troublesome, a policy judgment later adopted by this Court in *Seymour v. Superintendent*, *supra*, but the *LaPlant* court reached the opposite conclusion from *Seymour*. *LaPlant* was expressly overruled by *United States ex rel. Condon v. Erickson*, 478 F.2d 684, 688 (8th Cir. 1973) in reliance upon *Seymour*. The opinion in the *Condon* case expressly discusses the shift from the "title theory" of Indian jurisdiction to the boundary theory of *Seymour*. 478 F.2d at 688.

The rule of *Bates v. Clark*, *supra*, included an exception for any different rule imposed by act of Congress or treaty, and such exceptions were readily recognized. *Dick v. United States*, *supra*, 208 U.S. at 358-359; *Buster v. Wright*, 135 F. 947, 952 (8th Cir. 1905); *Kills Plenty v. United States*, 133 F.2d 292 (8th Cir. 1943), *cert. denied*, 319 U.S. 759. Also, there was some inconsistency in this Court's statement in *United States v. Celestine*, 215 U.S. 278, 285 (1909), that "when Congress has once established a reservation all tracts included within it remain a part of the reservation until separated therefrom by Congress." This language was quoted by the Court in both *Seymour*, 368 U.S. at 359, and *Mattz*, 412 U.S. at 504.

In 1932 Congress expressly included rights-of-way across Indian reservations within the jurisdiction of the Major Crimes Act. Act of June 28, 1932, ch. 284, 47 Stat. 336. But in 1942 Felix Cohen still did not view fee lands within Indian reservations to be Indian country. F. Cohen, *Handbook of Federal Indian Law* (1942 ed., 1971 reprint, U.N.Mex. Press), pp. 7, 359. This Court noted as much in *Seymour*, 368 U.S. at 357, n. 15.

In 1948 Congress resolved the question of fee lands by expressly including them in the definition of Indian country codified in 18 U.S.C. § 1151. This "anti-check-boarding" policy was sustained in *Seymour* and more recently was even found to override the express grant of state jurisdiction in 25 U.S.C. § 349, when an Indian allotment is patented in fee. *Moe v. Confederated Salish & Kootenai Tribes, supra*, 48 L.Ed.2d at 108-110.

However, at the time the Rosebud statutes were enacted, the "title theory" was dominant. A congressman then would have assumed with the court in *Hollister v. United States, supra*, that each parcel ceased to be Indian country upon the extinguishment of Indian ownership. The term "diminished" would mean diminished in ownership, not boundaries, since ownership was then thought to be the significant jurisdictional factor. And the Indian ownership was not to end immediately but gradually, over many years. The Court recently recognized this use of the term "diminished" in a relevant context in *Moe v. Confederated Salish & Kootenai Tribes, supra*, 48 L.Ed.2d at 109-110:

If the General Allotment Act itself establishes Montana's jurisdiction as to those Indians living on "fee patented" lands, then for *all* jurisdictional purposes—civil and criminal—the Flathead Reservation has been substantially diminished in size.

* * *

The State has referred us to no decisional authority—and we know of none—giving the meaning for which it contends to § 6 of the General Allotment Act in the face of the many and complex intervening jurisdictional statutes directed at the reach of state law within reservation lands— . . . Congress by its more modern legislation has evinced a clear intent to eschew any such "check-

board" approach within an existing Indian reservation, and our cases have in turn followed Congress' lead in this area.

Furthermore, it bears repeating that at the time of the Rosebud Acts, the Court had already clearly stated the essential difference between Indian lands purchased and paid for immediately and Indian lands opened to uncertain future sales. *Minnesota v. Hitchcock, supra*. The distinction drawn by that case is particularly significant in "title theory" terms.

For these reasons, contemporary references to "diminished" in connection with the Rosebud Acts do not evince a clear intent to terminate *immediately* those portions of the reservation. The Court has recently indicated that contemporary uncertainty as to the state of the law concerning Indian jurisdiction raises doubts about Congressional intent, which doubts should be resolved in the Indians' interest. *Bryan v. Itasca County, — U.S. —*, (No. 75-5027, June 14, 1976, 44 U.S. L.W. 4832, 4838).

The "title theory" also explains the inclusion in the 1910 Rosebud Act and some other allotment and surplus land statutes of a provision extending the Indian liquor laws to the opened territory for twenty-five years. 1910 Act § 10. Under the "title theory," parcels would avoid the Indian liquor laws and become wet islands as each parcel was sold and paid for. *Dick v. United States, supra*.

In this liquor provision, we again have the twenty-five year period expressed on the face of the act as the duration of federal protection over the area in question, an explicit indicator of Congressional intent as to when the reservation was to be terminated.

(3) SCHOOL LANDS. The Court of Appeals reasoned that inclusion of school lands grants to the State in each of the Rosebud statutes demonstrated an intent to terminate the opened areas of the Reservation. 521 F.2d at 100-101. However, to the extent one can conclude anything at all from these provisions, they support petitioner's position.

As previously noted, the Court in *Minnesota v. Hitchcock*, 185 U.S. 373 (1902), had decided that the Congressional choice of opening Indian reservations to uncertain future sales over outright purchase was crucial to school lands. In the future sales arrangement, the lands continued to be held in trust for the Indians until sold and never became public domain. When Indian lands were purchased outright, the school sections would automatically pass to the states, which were entitled to school sections on the public domain. Congress was surely aware of this decision, since it had enacted the special jurisdictional statute authorizing the Court to hear the case. 31 Stat. 950 (1901).

Under *Minnesota v. Hitchcock*, the South Dakota Congressmen knew their State would lose the school lands sections unless these were separately purchased outright and granted to the State. Thus they were fully aware of the importance of the change from purchase to opening in trust.

E. There Is No Sound Basis for a Finding That Congress Intended Immediate Termination of the Opened Portions of Rosebud.

Like all allotment acts, the Rosebud Acts intended the eventual assimilation of the Indians and removal of federal protection from them—which would include termination of the reservation.

Because of the later repudiation of the allotment policy, the crucial question has become whether the allotment and opening statutes intended to terminate the areas opened to settlement immediately or upon full consummation of the twenty-five year trust plan. Such intent is difficult to ascertain for several reasons. The difference was much less important then, since it was assumed that the reservation would be terminated within the foreseeable future in any event. The boundary question was obscured by the "title theory" of Indian country under which a parcel of land ceased to be Indian country as the Indians' title was purchased. The important Indian cases of the day involved liquor control, where the "title theory" was applied.

The Rosebud Acts on their face do not support an intent to terminate the opened areas immediately. The Indians were not to be removed from these areas. In one area, the tribe retained the timber lands. 1910 Act § 4. The Government retained land in two of these areas for federal Indian agencies, schools, and missions. 1904 Act § 2; 1910 Act § 1. And the Indians continued to own the lands opened to homesteaders until such lands were actually sold and paid for, a process taking several years and leaving the Indians as trust owners of lands never sold. While the acts use words of cession, these are fully consistent with the interpretation that cession was to occur only to the extent of actual sales and payment in the future, parcel by parcel. The United States expressly disclaimed an intent to exercise its power to take the opened lands except for school sections. Since there was no immediate payment nor an immediate taking, there is no basis whatsoever for an

immediate extinguishment of the Indians' interest. These features closely parallel the operation of the statutes construed in *Mattz* and *Seymour*.

The principal reliance of the Court of Appeals to counter the factors just discussed was on the references to the diminished reservation. But the court failed to consider whether such references meant diminishment in ownership or in reservation boundaries, or whether such diminishment was to take place immediately or only upon full completion of the Government's plan for the opened area. We think it is clear from the historical context and the legislative history, as acknowledged by respondents' counsel, that Congress did not address the boundary question. Thus the term "diminished reservation" did not have the meaning attributed to it by the Court of Appeals.

For these reasons none of the Rosebud Acts exhibits the clear intent to effect an immediate termination of the affected areas required by the decisions of this Court.

CONCLUSION

For the reasons stated, amici respectfully urge this Court to reverse the decision of the Court of Appeals.

Respectfully submitted,

RICHARD B. COLLINS
ROBERT S. PELCYGER
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, Colorado 80302
Telephone: (303) 447-8760

Counsel for Amici Curiae

August 1976